TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~230~~ 105

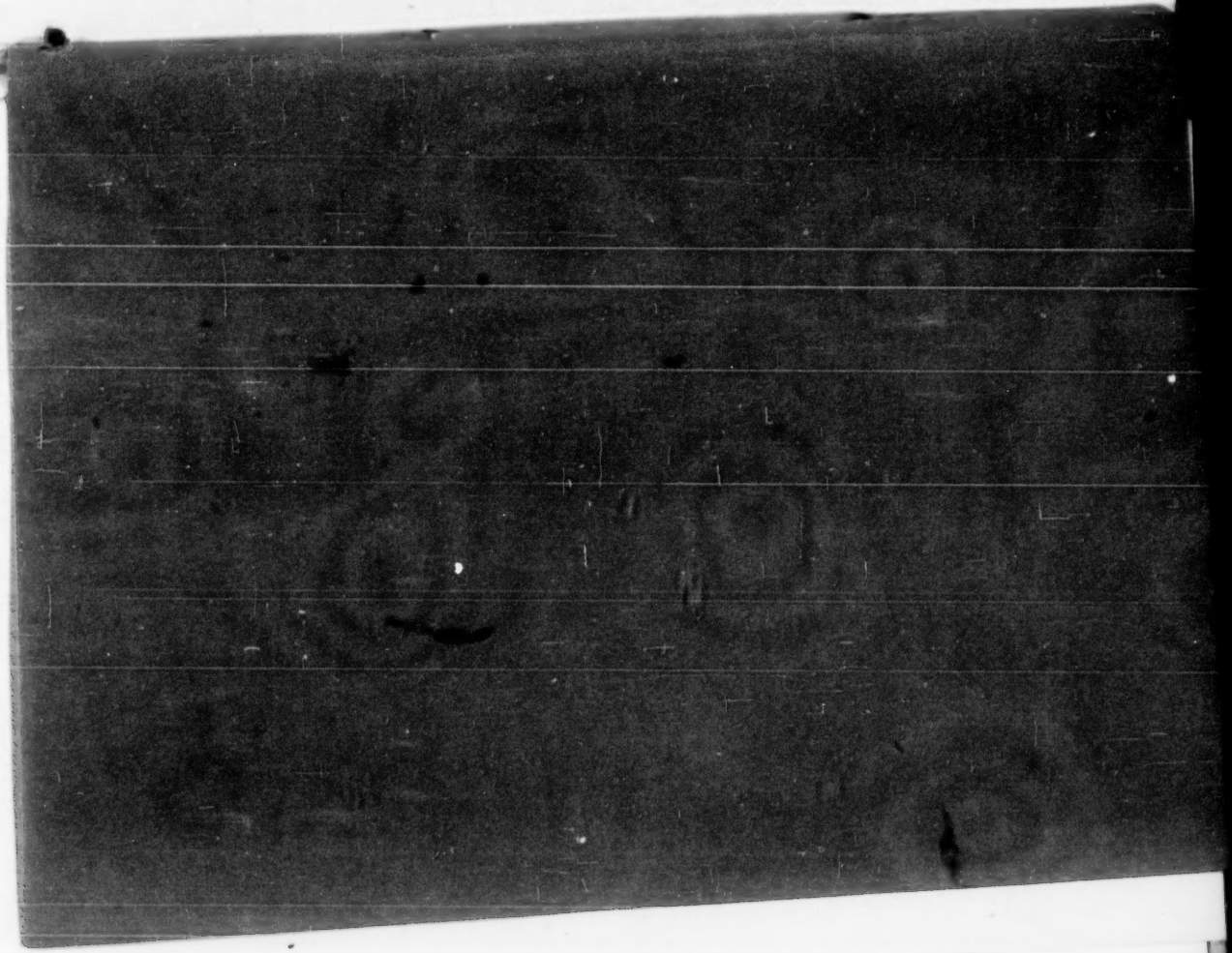
C. CASE, RECEIVER, AND H. R. HULBURD, COMPTROLLER OF THE CURRENCY UNITED STATES, APPELLANTS,

vs.

A. TERRELL & CO., F. BAUER, ET AL., CREDITORS OF THE FIRST NATIONAL BANK OF NEW ORLEANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 1, 1869.



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INDEX.

	Original.	Print.
Bill	1	1
Subpœna in chancery to T. P. May	15	5
Marshal's return	17	5
Answer of Charles Case as receiver	17	5
Exhibit A	42	12
Exhibit B	42	12
Exhibit C	43	12
Exhibit D	44	13
Exhibit E	47	14
Complainants' replication to defendants' answer	49	14
Answer of H. R. Hulburd	49	15
Entry at rules pro confesso against G. T. Beauregard and T. P. May	53	16
Motion and order	55	16
Interrogatories in behalf of complainants	55	16
Answers of D. B. Forbes to interrogatories	59	18
Answers of Louis Meig to interrogatories	63	19
Interrogatories propounded to G. T. Beauregard in behalf of complainants	66	19
Answers of G. T. Beauregard to interrogatories	69	20
Interrogatories propounded to T. P. May in behalf of complainants	74	22
Answers of T. P. May to interrogatories	78	23
Motion for publication of testimony	80	24
Marshal's return	80	24
Motion and order, cause fixed	81	24
Marshal's return	82	24
Motion and order, cause specially assigned	82	25
Notice of trial	83	25

	Original.	Print.
Marshal's return	84	25
Hearing and order, cause referred to John B. Weller as special commissioner	84	25
Note of evidence	86	26
Document A	86	26
Document B	92	28
Document C	96	29
Testimony of W. W. Howe	97	29
Report of master in chancery	98	30
Rule to homologate master's report	109	33
Marshal's return	109	34
Motion for confirmation of master's report, and final decree	110	34
Exception of C. Case, receiver, to master's report	111	34
Order, continuance of rule	113	35
Final judgment	113	35
Order, taxing master's fee	116	36
Petition of appeal and order	116	36
Clerk's certificate	118	36
Citation of appeal and service, annexed	119	37

1 Circuit court of the United States, fifth circuit and district of Louisiana.—In chancery.

TERRILL & CO., BAUER ET AL., CREDITORS of 1st National Bank,
vs.
HON. C. CASE, RECEIVER; HON. H. R. HURLburd, Comptroller, &c., &c.
} No. 5553.

Bill.—Filed April 8th, 1868.

UNITED STATES OF AMERICA,
Circuit Court of the United States for the District of Louisiana:

To the honorable the judges of the circuit court aforesaid for the district of Louisiana:

A. Terrill and Company, a commercial firm composed of A. Terrill and F. P. Martinez, creditors of the First National Bank of New Orleans in the sum of eighteen thousand nine hundred and fifty $\frac{61}{100}$ dollars; F. Bauer, a creditor of the same bank, in the sum of
2 thirteen thousand one hundred and ninety-four $\frac{65}{100}$ dollars; H. T. Vennard, a similar creditor, for seven thousand dollars; Lovell & Bailey, a firm composed of H. I. Lovell and W. S. Bailey, creditors of said bank for sixty-six hundred and fifty-two $\frac{92}{100}$ dollars; and H. T. Burgess, a creditor, for forty-three hundred thirty-seven $\frac{71}{100}$ dollars, all of whom reside in the city of New Orleans, and are citizens of the State aforesaid, bring this bill on their own behalf and other creditors of said bank, as depositors of money therein, in the regular course of business, and for any other cause, against the Honorable Charles Case, receiver of said bank, and the Honorable H. R. Hurlburd, Comptroller of the Currency, Thomas P. May, G. T. Beauregard, citizens of the State aforesaid, as defendants.

And thereupon your orators complain and say that the First National Bank of New Orleans was organized and conducted business in New Orleans from about the year 1864 till the 12th May, 1867, as a
3 banking institution under the act of Congress of the 3d June, 1864, and the amendments thereto, providing a Bureau of Currency and for the organization of banking associations; and at the time of its failure, in April, 1867, the said Thomas P. May was the president of the same, though not when its operations ceased in May, 1867.

2. Your orators further complain and say that about the 12th May, 1867, the said bank failed, and that its operations were suspended by orders from the Comptroller of the Currency, for causes specified in the act, and the said Charles Case was appointed receiver, and is now engaged in liquidating the concerns of the same under his appointment.

3. Your orators further complain and say that the said bank deposited, for the security of its creditors, in bonds of the United States, $450,000, which are now held under the laws aforesaid, and that they constitute a fund for the payment of the indebtedness of the said bank and are applicable to the same.

4. Your orators further complain and say that the said bank
4 was possessed of notes, bills of exchange, securities, and effects, which are also liable as a fund for the creditors of said bank, and that with these there ought to be a large dividend for the creditors aforesaid.

5. But your orators shew to your honors that the affairs of the said bank have become complicated and entangled by the efforts of the United States to secure from the same their claims against their debtor, Thomas P. May, who was then the president of the bank.

6. Your orators further complain and say that the said Thomas P. May, prior to the 12th May, 1867, had been assistant treasurer of the United States, and was a defaulter in the said office for the sum of one million of dollars or upwards; and at the date aforesaid the officers of the treasury were engaged in making a settlement with him. In the course of this settlement they took from him an assignment of all of his property. They well knew that he was insolvent; that he was a
5 defaulter, and he had been actually prosecuted criminally for his previous default and malversation in office; that in this condition they, on the 14th of May, 1867, presented to the said bank a check drawn by the said May in favor of his firm, T. P. May & Co., and by them endorsed for the sum of three hundred and fifteen thousand seven hundred and seventy-nine $\frac{11}{100}$ dollars, and drawn on said bank and received in payment therefor $80,000 in currency, and ten thousand three hundred and seventy $\frac{38}{100}$ in gold coin, in part payment thereof, and caused the same to be protested for non-payment for the residue. At the time of the drawing and endorsement of this check, your orators aver that the operations of the bank had been legally suspended, and that no payment or acts of any its officers were valid; that the certificate on the check of the teller of the bank, that it was good, was false and unauthorized; and that no credit was legally due to it, and
6 no consideration was given for the check itself, but it was received wholly as a desperate effort to obtain from a defaulting, discredited, and criminal debtor whatever he was willing in his extremity to surrender.

7. Your orators further aver and say that at the time of the drawing of this check the said May was a debtor to the bank for overdrafts, and the unauthorized abstraction of its funds, in an amount far greater than any credit that he had on the books of the bank and in its suspended and insolvent condition, and in his own insolvent and hopeless condition he had no authority or power to appropriate any portion of any nominal credit until he had paid to the bank his own debt to it; that among the acknowledged overdrafts and debts, there is found one for one hundred and twelve thousand and nine $\frac{07}{100}$ dollars, standing to the debit of G. T. Beauregard, but due by said May, and a check of one hundred and twenty-five thousand dollars, which was cred-
7 ited to said May, or to Beauregard, lessee, on the 27th April, 1867, as cash, when there was no cash paid, and no money received or receivable therefrom, and which check does not appear in the assets of said bank, and is not accounted for in any manner, and represents a debt of said May.

8. Your orators further complain and say that notwithstanding that these facts have been made known to the receiver and the Comptroller of the Currency, and through them to the Treasury Department, there seems to be great reluctance on the part of the latter to withdraw their hold upon the money they have received or the security they supposed they had obtained, and claim, as your orators are informed, that these payments are valid, and that the check of May for the $315,779 10 is binding upon him, was an appropriation of so much money of the bank, and that it creates a priority in favor of the United States for its
8 whole amount, and this is founded upon the false certificate of the teller, that the check was good. But your orators charge

that the teller had no right so to certify, and that the bank in its then condition was not bound, and that at no time would such a check have had such an effect, but especially under the conditions in which it was given and negotiated. That it was not negotiated in the course of business, but was assigned, with other property, under the conditions before mentioned.

9. Your orators further complain and say that the said May in his assignment to the United States included his interest in a copartneship which he had formed with G. T. Beauregard, a defendant in this bill, the object of which was to conduct the operations of the New Orleans and Carrollton Railroad Company in New Orleans, under a lease to them for twenty-five years, of the value of about three hundred thousand dollars. The debt of one hundred and twelve thousand and nine $\frac{8}{100}$ dollars apparent on the books of the said bank as due by said
9 Beauregard as lessee, was actually due by the said May to the bank, and the said Beauregard had a lien upon the property of the partnership for this amount before the said May could dispose of the same; that the officers of the treasury of the United States, recognizing this fact in their sale of the said property in said railroad company to Alexander Bonneval, Joseph Hernandez, and George Binder, in a public act passed before Le Gardeur, notary, the 21st August, 1867, for two hundred and eighty-eight thousand dollars, acknowledged their liability and assumed to pay the said debt to the said bank. That by this assumption the United States agreed to pay the bank, and this sum is a credit upon every or any claim they may have upon it.

10. Your orators further complain and say that the said receiver, as the representative of the bank, was entitled to the benefit of all the
10 claims that said Beauregard had upon the effects of the partnership, he being the apparent debtor of the bank as managing partner of the concern. He is further entitled to claim of the firm of Beauregard and May the said property, and to have their effects applied to the same. That the said May at the date of his transfer was insolvent, and that he had no power of disposition to the United States of any right in the said partnership property until its debts were liquidated, and that though this debt was actually the debt of May, it was a valid claim of the bank against the firm of Beauregard and May, and the assumption by the United States of this debt was no more than a recognition of a liability legally existing.

But now, so it is, may it please your honors, though justice of their claims upon the funds of the bank, and to the application of its funds to the payment of the debts to the United States, are not estimated at the treasury as they appear to your orators, and for the pur-
11 pose of ascertaining the law of the case they have brought this bill on behalf of themselves, as all other creditors of the bank. They say that many of these creditors are unknown to them, that they are very numerous, and their names and places of residence cannot be ascertained by inquiry, and that it would embarrass their suit if all were made parties. They acknowledge that the First National Bank of New Orleans was a depository of funds of the United States, that the United States have valid claims against the said bank, and that it may be are entitled to some priority in their judgment. To the end that the claims of the United States may all be ascertained and defined, that their priorities may be declared and adjusted, and that the liquidation and settlement of the affairs of said bank may be legally conducted, your orators pray that the Honorable Charles Case, receiver as afore-

said, and the Honorable H. R. Hurlburd, Comptroller of the Cur-
12 rency, may be made parties to this bill, and that they may answer the same under the rules of this honorable court, and especially that they may make full, true, and complete answer, to the best of their knowledge, information, and belief, to the following interrogatories:

1st. What are the claims made by the United States upon the First National Bank of New Orleans in their capacity of a depository of public money; what officer made the deposit; what evidence of the deposit exists; and what payments have been made on that account?

2d. What other claims have been made by the United States upon the said bank; in what manner did those claims arise, and by what evidence are they supported; what payments have been made upon them; and how far is any priority claimed upon them?

3d. What is the claim made against the bank upon the assignments or transfers of T. P. May, the president of the said bank; when and
13 how, and by what officers were those claims obtained; and what was the condition of May at that time?

4th. What is the nature of the liability of the United States for the debt of $112,009 09 of May to the bank aforesaid, arising out of the debit to Beauregard on the books of the bank and the assumption of that debt by May and the United States? Has any credit been given to the account of the United States against the bank?

5th. What securities are held by the United States in bonds and effects of the bank, and how have they been disposed of, and what effects are under the control of the Bureau of Currency belonging to said bank?

6th. What amount of the assets of the bank have been collected, and how are they to be disposed of in payment?

Your orators pray that the debt of the United States be ascertained, and the extent of its priority may be ascertained and declared;
14 that they be charged with all sums that they have received on any account belonging to the bank or for which they are liable to the bank, and especially for the money received from the check of T. P. May, before mentioned, and the sale of the lease of the Carrollton R. R. Company, to the extent of $112,009 69, and that the check of said May be disallowed as a charge upon the bank, or as entitled to payment from its effects. Your orators pray that a writ of injunction issue from this honorable court to restrain the honorable the Comptroller of the Currency from making a payment until this account be adjusted, and that the funds of the bank in his hands may be held till the decree of the court may be had on this bill and in this cause.

Your orators pray that writs of subpœna may be issued to the several defendants hereinbefore mentioned, and that such other relief may be granted to them as may be consistent with equity and good conscience.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL.
HENRY B. KELLY.

15 The circuit court of the United States, district of Louisiana.

Before me, clerk of the circuit court aforesaid, personally came Frederick Bauer, who maketh oath and saith that the statements of this bill are true in substance and matters of fact.

(Signed) F. BAUER.

Sworn to and subscribed April 3d, 1868, before me.

(Signed) F. B. VINOT, *D'y Clk.*

Service acknowledged; subpœna waived, April 3d, 1868.
(Signed) CHARLES CASE,
Receiver 1st Nat. Bank of N. O.
(Signed) G. T. BEAUREGARD, "*Lessee*,"
By L. E. SIMONDS, *Solicitor.*

Subpœna in chancery to T. P. May.—Issued May 12th, 1868.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

16 You are commanded to summon Thomas P. May, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1868, then and there to answer a bill in chancery filed against him and others, wherein A. Terrill & Co., F. Bauer, and others, creditors of the First National Bank of New Orleans, all citizens of the State of Louisiana, are complainants, and said Thomas P. May and others are defendants. Herein fail not; and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 12th day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and the 92d year of American independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

17 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1868, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May 13th, 1868, by the U. S. marshal, and on the 14th day of May, 1868, served copy of within subpœna in chancery on Thos. P. May, named herein, personally at his domicil at parish St. John the Baptist, State of Louisiana, 40 miles distant from this city.

New Orleans, May 16th, 1868.

(Signed) O. B. BOISFONTAINE,
D'y Marshal.

Answer of Charles Case as receiver.—Filed June 9th, 1868.

United States of America, circuit court of the United States for
18 the fifth circuit and district of Louisiana.

The separate answer of Charles Case, as receiver of the First National Bank of New Orleans, to the bill of complaint of A. Terrell and Company, F. Bauer, and others, filed and pending in said court, against the said respondent and the Honorable Hiland R. Hulburd, as Comptroller of the Currency, and Thomas P. May and G. T. Beauregard.

The said respondent, as receiver as aforesaid, for answer to said bill,

or to so much and such parts thereof as are deemed material to make answer unto, answering, says that he admits that said Terrell and Company are creditors of said bank to the amount of $18,950 61; that said Bauer is also a creditor of said bank to the amount of $13,199 65; that said Lovell & Bailey are creditors of said bank to the amount of $4,000; and that said H. T. Burgess is a creditor of said bank for the sum of $4,337 71. There are also numerous other creditors of said bank,
19 for large amounts, whose names respondent could give, but who reside in this and many other States, and whose exact localities are in many instances to this respondent unknown.

Respondent, further answering, admits that said First National Bank was organized, and conducted business in New Orleans from about the year 1864 until the 12th of May, 1867, as a banking institution under the said acts of Congress in said bill mentioned; and that the said Thomas P. May was elected president thereof on the 6th day of October, 1866, and held the said office until April 8th, 1867, and not afterwards.

Respondent, further answering, says that on the 13th day of May, 1867, the said bank failed to meet and pay checks drawn thereon, which were held and presented for payment by the agents of the Treasury Department of the United States; and that on the same day, and not previously thereto, the said agents took possession of said bank by order of the said Comptroller of the Currency or of the Treasurer of the
20 United States, or both.

On the following day one of the circulating notes of the said bank was presented at its counter for payment, and, payment thereof being refused, the same was then and there duly protested.

On the 20th day of the same month this respondent was appointed receiver of said bank by said Comptroller of the Currency, with the approval of the Secretary of the Treasury.

On the 27th day of said month this respondent, having previously given bond as required, took possession of said bank as such receiver, and from thence hitherto has been and still is engaged in liquidating its affairs under his said appointment.

This respondent, further answering, admits that said bank at different times deposited with the Treasurer of the United States, United States government bonds, and not money, to the amount of four hundred and fifty thousand dollars, which said bonds were so deposited, not
21 as security for the general creditors of the said bank, but as security for the said bank on its liability exisiting or to exist as a United States government depository, and as security for the payment of its circulating notes.

At the time this respondent took possession of said bank as receiver, there were also monies, notes, bills of exchange, accounts, securities, and effects belonging to said bank, which, so far as of value, were and are liable as a fund for the payment of its creditors; portions of which said assetts have been converted into currency, which, with the money on hand at the time this respondent took possession of said bank, has been paid by him into the Treasury of the United States as hereinafter stated.

This respondent, further answering, says that he has been informed and believes it to be true, and therefore admits that some time prior to the suspension of said bank, but for what precise period he cannot state, the said Thomas P. May had been assistant treasurer of the
22 United States at said New Orleans; that he was a defaulter in said office for a large amount, but whether for more or less than one million of dollars respondent is not informed. He believes said de-

falcation amounted to over five hundred thousand dollars, perhaps double that sum, but he can neither admit or deny any specific amount.

This respondent is informed and believes, and therefore admits it to be true, that at the time said bank suspended the said agents of the Treasury Department and of the said Comptroller of the Currency, who then and there took possession of the same as hereinbefore stated, were also then engaged in endeavoring to settle with said T. P. May for said defalcation, and to collect from him so much of his indebtedness as was possible, and to obtain from him the best security he could give for the balance; that in pursuance of this object, they then, or about that time, took from said May an assignment of all his property, and, among other things, received from him his own check, drawn on said bank
23 for the sum of three hundred fifteen thousand seven hundred seventy-nine dollars and eleven cents; said check was dated May 13th, 1867, was payable to the order of T. P. May and Company, by which firm it was endorsed in blank, May 14th, 1867, on which said day or on the day previous said check was certified "Good" by one of the tellers of said bank. That on one of said days the said agents of the Treasury Department drew from said bank on said check about eighty thousand dollars in currency, and also ten thousand three hundred seventy dollars and thirty-eight cents in gold, which was sold, and was to be credited on said check, at 35% premium, and said check was protested for non-payment of the balance. These were the payments applicable to the discharge of said check as stated in the certificate of protest, but this respondent has been informed and believes that the payments
24 to said agents on said check in currency, gold, and premium thereon, amounted to one hundred and four thousand dollars.

Respondent believes that at the time the said agents received said check and drew said funds thereon, they knew or had good reason to believe that said May was largely insolvent. And respondent admits that said May has since been prosecuted criminally for his said alleged defalcation. This respondent has been informed and believes, and therefore admits it to be true, that said check was received by said agents of the Treasury Department to apply so far as paid or collectable in liquidation of the defalcation of the said T. P. May; that at the time it was certified "Good" by said teller said bank had virtually suspended business, and was in the hands and under the control of the said treasury agents. Whether or no the said teller was then authorized so to certify said check, and whether or no the said May in his own insolvent
25 condition had authority or power to appropriate any portion of any items standing nominally to his credit on the books of said bank, are questions of law which are respectfully submitted to the adjudication of this honorable court upon the facts hereinbefore and hereinafter stated.

This respondent, further answering, says that from an examination of the books of the said bank it appears, and therefore he states the fact to be, that the said Thomas P. May kept a deposit account in said bank, and that the nominal balance to his credit on said account on Saturday, the 11th day of May, 1867, which was the last day said bank did banking business, was $315,779 11. This respondent further says that he has been informed and believes that on the said 13th day of May, 1867, the said Thomas P. May was, and, for some time prior thereto, had been, a partner in a copartnership of which G. T. Beauregard and A. C. Graham were the other members, the object of which copartnership
26 was to conduct the operations of the New Orleans and Carrollton railroad, under a lease to them for a period of twenty-five years;

and this respondent charges that said copartnership then, and for some time previous, kept and had kept an account in said bank, which was kept in the name of G. T. Beauregard, lessee, and which account, on the 14th day of September, 1866, had been and then was largely overdrawn, as by the said account on the books of the said bank will more fully appear. This respondent has been informed, and believes and charges the fact to be, that in order to cover said overdraft, and to make it appear that there was a balance to the credit of said account on the books of the said bank, the said Thomas P. May, on the day last aforesaid, executed a note in the name of G. T. Beauregard, lessee, payable on demand, to order of said First National Bank, for the sum of forty thousand dollars, ($40,000,) with interest from date until paid, which
27 said note was, on the 15th day of September, 1866, passed to the credit of said account as part of the cash deposit of that day by or on account of said Beauregard, lessee; but said note was not then, nor has it ever been, either in whole or in part paid; said note was endorsed by F. J. Herron, and a copy thereof is hereto attached, marked Exhibit "A," and made part of this answer. This respondent has been informed that said Beauregard has disputed or questioned the authority of said May to execute said note, but whether such be the fact respondent cannot positively assert or deny.

This respondent, further answering, says that from the books of the bank it further appears, and therefore he charges the fact to be, that on the 19th day of March, 1867, the said account of said copartners, so as aforesaid kept in said books, in the name of said Beauregard, as lessee, was again largely overdrawn, to wit, to the amount of one
28 hundred and twenty-one thousand one hundred seventy-five dollars and sixty-three cents, ($121,175 63.) Respondent further charges that, about the date last aforesaid, it was understood, and such was the fact, that a bank examiner, under orders from the said Comptroller of the Currency, was about to examine the books, notes, and funds of said bank, and that, to cover up said last-mentioned overdraft, the said Thomas P. May, on said 19th day of March, 1867, drew his draft on A. C. Graham, No. 3 Broad street, New York, payable to his own order, forty-five days after sight, for the sum of one hundred twenty-five thousand dollars, ($125,000,) which said draft was in duplicate, and was then and there endorsed by said May to said bank, and was passed to the credit of the account of said Beauregard, lessee, as so much cash, thus making a nominal balance in his favor; but respondent further charges the fact to be that no cash was then or ever realized on
29 said draft, that the same was not drawn against any funds then in the hands of said Graham applicable to the payment thereof, nor had the said May any reason to anticipate that funds of his would be in the hands of said Graham, at maturity of said draft, sufficient to pay the same or any part thereof; said draft was in fact never stamped or sent forward for acceptance or payment by said bank; but it is not true, as charged in complainants' bill, that the same was not accounted for, or does not appear in the assetts of said bank.

This respondent reported the same as worthless paper in Schedule D, of the first report made by him to the said Comptroller of the Currency, and a copy of said draft is hereto attached marked Exhibit B, and made part of this answer. This respondent, further answering, says that from the books of said bank it further appears, and therefore he charges the fact to be, that when said bank suspended the account of said co-
30 partners, so as aforesaid kept in the name of said Beauregard, lessee, was again overdrawn in the sum of seventy-two thousand and

eight dollars and eighty-nine cents, ($72,008 89,) and so stands to this date. Thus, from the facts aforesaid, it appears that when the said check for three hundred fifteen thousand seven hundred seventy-nine dollars and eleven cents ($315,779 11) was drawn by said May on said bank, and when the same was certified by the said teller, the said May was in fact a debtor of said bank, as one of the copartners of the copartnership aforesaid, in the sum of two hundred thirty-seven thousand eight dollars eighty-nine cents, ($237,008 89.)

This respondent, further answering, says that at the time he took possession of said bank as receiver as aforesaid, he found among its assets, notes and bills, as follows, to wit: Thomas P. May's acceptance of the draft of A. C. Graham for one hundred thousand dollars, ($100,000,)
31 drawn April 27th, 1867, accepted May 9th, 1867, payable thirty days after sight; also a note of E. O. Haile, dated June 16th, 1866, for $600; note of J. H. Veazie, dated September 1st, 1866, for $3,943 67; and note of E. A. Deslonde, dated November 30th, 1866, for $5,000. The note of said Haile was past due; the notes of said Veazie and Deslonde were payable on demand. On each of said notes said Thomas P. May was and is endorser; also the following notes on each of which said Thomas P. May was and is endorser, viz:

D. B. Forbes' note, due May 20th, 1867, for $20,284; L. Heickelheim's note, due May 30th, 1867, for $600; L. C. D. Henriques' note, due June 5th, 1867, for $1,300; Geo. F. Brott's note, due June 8th, 1867, for $4,000; E. A. Deslonde's note, due June 5th, 1867, for $2,000; Miles T. Steele's note, due June 19th, 1867, for $50,000; George W. Smith's note, due July 3d, 1867, for $1,000; all of which said notes yet remain due and unpaid.

This respondent, further answering, says that he is informed and believes, and states the fact to be, that the government of the
32 United States, through its proper authorities, insists, and will insist, on the hearing of this cause, that the drawing of said check for $315,779 11 by said May, and its being certified as aforesaid, was and is an appropriation of so much of the monies or assets of the bank to the satisfaction of said May's aforesaid defalcation, and that thereby a priority in payment was created and still exists in favor of said government for the full amount of said check; and this respondent is instructed to set up and show by this, his answer, that such have been, are, and will be the claims insisted upon by the said government.

This respondent admits that said May assigned his interest in the copartnership aforesaid to the United States government, and that he also so assigned, or assumed to assign, the interest of the said copartner, A. C. Graham.

33 Respondent admits that the lease held by said copartners of said New Orleans and Carrollton railroad was and is of great value, but whether of the value of $300,000 he can neither admit or deny.

Respondent has been informed and believes, and avers the fact to be, that the said government some time in the month of October, 1867, and not in the month of August of said year as charged in the said bill, sold the interest so as aforesaid assigned to said government in said railroad to Alexander Bonneval, Joseph Hernandez, and George Binder for the sum of $288,000, and that, by the terms of said sale, the said United States agreed to save the said purchasers harmless from any claim of the said bank for the aforesaid overdraft of $72,008 89, and also the said note for $40,000.

This respondent has not been informed and does not know what lien, if any, the said Beauregard had upon the said copartnership prop-

34 erty; but whether he had any lien, and, if so, whether it enured or enures to this respondent's benefit as receiver, and what, if any, power the said May had to assign his and the said Graham's interest in said railroad to the United States government, he prays may be enquired of and determined by this honorable court.

This respondent, in answer to the interrogatories propounded in complainants' bill, so far as the same have not hereinbefore been answered, says, that the claims made by United States upon said bank in its capacity of a depository of the public money are, so far as he is informed or can state the same, as follows, viz:

1st. The sum of ($215,573 37) two hundred fifteen thousand five hundred seventy-three dollars thirty-seven cents, which is understood to be internal revenue funds collected and deposited chiefly, if not entirely, by the collector of internal revenue for the first collection district
35 of Louisiana. The evidence of this indebtedness is to be found in the books of the bank, and as respondent believes can be further authenticated by the prescribed vouchers given by the bank, and held as well by such collector as by Treasurer of the United.

2d. The sum of ten thousand eight hundred eighty-eight dollars thirty-seven cents, ($10,888 37) which was also internal revenue money, as respondent is informed and believes, collected by one A. P. Cooley, a deputy collector in and for the State of Texas, and by him deposited in said bank at two different periods prior to its suspension. The evidence of this last claim consists of the books of the bank, the original certificate of deposit issued by said bank, and the affidavits of said Cooley and sundry other witnesses, all of which are in the hands of this respondent.

3d. The sum of three thousand five hundred twenty-eight dollars ($3,528) post-office funds, used by the postmaster of the city of
36 New Orleans to purchase exchange on New York City in favor of the postmaster at said New York City, the said draft being purchased as is alleged by the postmaster at New Orleans pursuant to instructions from the Post Office Department to remit certain monies to said New York. It does not appear from the books of the bank that said last-named sum, or any portion thereof, was actually on deposit in said bank at any time. The evidence of said last-named claim consists of two drafts of this bank on the Fourth National Bank of New York, each payable to the order of James Kelly, P. M.—one dated May 6th, 1867, for $2,512 00, the other dated May 13th, 1867, for the sum of $1,016 00—together with the affidavit of George P. Betts, money-order clerk for the postmaster at New Orleans, explaining and with what funds said drafts were purchased. Said drafts and affidavit are also in the hands of this respondent, and he is not aware of any payment on account of
37 these or any other claims held or set up by the government against said bank.

This respondent, further answering, says that at the date of the filing of the complainants' bill he had been notified of but one other claim of the United States government against said bank, viz., a claim to the credit of the Commissioner of Internal Revenue amounting to one hundred forty-eight dollars eighty cents, ($148 80,) which last claim respondent is informed and believes is valid and just. Since the filing of said bill respondent has been notified by the Treasurer of the United States that, on behalf of the government, he does and will claim the amount of the proceeds of the sale of the brig Volant and cargo, which were deposited in this bank before its suspension by order of the district court of the United States for the district of Louisiana, to the amount of $124,649 57, or about that sum, and this respondent annexes

hereto a copy of the letter of said Treasurer relative to said last-
38 named claim, marked Exhibit C, and made part of this answer; also a copy of respondent's reply to said letter, marked Exhibit D, and also made part of this answer; also extract from the order of said court as to the disposition of said proceeds, marked Exhibit E, and also made part of this answer. Said copies explain all that respondent knows or has done concerning the claim last aforesaid.

This respondent further says that from the books of the bank it appears there were other large deposits in said bank prior to its suspension, similar in character to the one last aforesaid, and it may be that as to all such the United States government may yet set up a similar claim. As to all claims asserted by said government against said bank, its agents insist upon the right of the said government to be first paid, and in full.

Respondent, further answering, says that the officers who obtained the assignments of property and rights from the said T. P. May
39 were Honorable John Jay Knox, then Deputy Controller of the Currency, and at the same time special agent of the Treasury Department, or of the Treasurer of the United States, and John F. Maline, also an agent of the Treasurer of the United States.

This respondent does not know what credit has been given to said bank by the Treasurer of the United States, but the said account should be credited, in addition to all monies paid over by this respondent, with the sum of $24,000 interest, which had accrued on bonds of said bank held by said Treasurer up to the 1st day of May, 1868. Respondent is informed and believes that said Treasurer holds or did hold United States government bonds, the property of, and deposited by, said bank, to the amount of $450,000, of which $250,000 was deposited as security for government monies which might be received by said bank, and $200,000 was security for the circulation of said bank, which, at the time of its suspension, amounted to $180,000.

40 Respondent believes that very recently some of these bonds have been sold to redeem said circulation, but if such sale has taken place he is not yet advised as to what were the net proceeds thereof.

Other than the monies and bonds aforesaid, neither said Treasurer or the Currency Bureau hold any of the effects of said bank so far as this respondent is informed or believes.

Respondent, further answering, says that of the assetts of the bank about $235,000 have been collected, including money on hand at the time he took possession as receiver, and excluding the aforesaid interest on bonds. Of this sum the Treasurer of the United States has received and holds for said bank $207,945 60.

This respondent has paid on collections which were paid into said bank on the 13th day of May, 1867, and which the Comptroller of the Currency ordered this respondent to refund, the sum of $13,261 87, and the balance, with the exception of about $3,500, now in his hands, has been expended in payment of his own salary, hire of clerks
41 and book-keepers, office rent, costs of court, attorney's fees, and other necessary expenses, of all which, as well as of exact sums collected in money and accounts, and claims settled by way of compensation or set-off, this respondent is ready to furnish details, as this honorable court may direct; and this respondent, having fully answered, prays to be hence dismissed, with his reasonable costs, to be adjudged against said complainant.

(Signed) J. D. ROUSE,
Solicitor for Respondent.

UNITED STATES OF AMERICA,
Fifth Circuit, District of Louisiana, ss:

The said Charles Case, being duly sworn, on his said oath says that all the several matters in the foregoing answer which he has stated from information and belief he believes to be true, and that all the other several matters therein stated are true in substance and in fact.

(Signed) CHAS. CASE.

42 Subscribed and sworn to before me this 8th day of June, A. D. 1868.

(Signed) K. LOEW, *U. S. Comm'r.*

Exhibits filed with and referred to in foregoing answer.

EXHIBIT A.

$40,000. NEW ORLEANS, *Sept. 14th*, 1866.

On demand I promise to pay the First National Bank of New Orleans, or order, forty thousand dollars, for value received, with interest at the rate of —— per centum per annum from date until paid, having deposited with them as collateral security for the payment of the same.

G. T. BEAUREGARD,
P'r pro T. P. MAY.

(Endorsed:) F. J. Herron.

[$20 int. rev. stamp.]

EXHIBIT B.

Exchange for $125,000.

1. NEW ORLEANS, *March 9th*, 1867.

Forty-five days after sight of this first of exchange (second unpaid) pay to the order of myself one hundred and twenty-five thousand
43 dollars, value received, and charge the same to account of

Yours, t'y, T. P. MAY.

To A. C. GRAHAM, Esq.,
No. 3 Broad St., New York.

No.

(Endorsed in blank:) T. P. May.

EXHIBIT C.

Copy of letter from Treasurer of the United States referred to as Exhibit C, and made part of answer.

TREASURY OF THE UNITED STATES,
DIVISION OF NATIONAL BANKS,
Washington, May 23d, 1868.

SIR: Upon the facts alleged in the original papers on file in this office, it is claimed that the United States, under the act of Congress of 3d March, 1797, chapter 20, section 5, and other laws in force, is a pre-

ferred creditor of the First National Bank of New Orleans for the amount (alleged to be $124,649 57) deposited therein by order of
44 court July 29th 1864, in the case of the United States against the brig Volant and cargo, (being proceeds of the sale of the same,) and that the United States should demand the payment of said deposit to them for the claimants thereof (being British subjects) as a preferred lien upon the assets of said bank.

You will therefore please take notice of the above claim, to the end that said assets may not be placed beyond your reach until said claim shall be determined.

Very respectfully,

F. E. SPINNER,
Treasurer U. S.

CHARLES CASE, Esq.,
Receiver First National Bank, New Orleans, La.

EXHIBIT D.

Copy of letter of Charles Case, receiver of First National Bank of New Orleans, to Hon. F. E. Spinner, Treasurer of the United States, referred to as Exhibit D, and made part of answer.

RECEIVER'S OFFICE,
45 FIRST NATIONAL BANK OF NEW ORLEANS,
New Orleans, May 28th, 1868.

Hon. F. E. SPINNER, *Treasurer U. S.*

DEAR SIR: Yours of the 23d inst., relative to proceeds of sale of brig Volant and cargo, is this day to hand. I have deemed it my duty to furnish copies thereof both to the U. S. dist. attorney and to the counsel for the general creditors, to the end that the former may set up the government claim, if he desires, in the answer of the Comptroller to the bill in chancery, pending in U. S. circuit court here, in behalf of the general creditors, and that the latter may have early notice of what is claimed. Permit me in this connection to state some facts not perhaps within your knowledge. On the 4th of June, 1867, the U. S. district court pronounced a decree, a copy of which is herewith enclosed.

Pursuant to this decree Mr. Edward Briggs appeared before me,
46 or rather before my clerk, for I was absent, and in his behalf claimed and received my certificate No. 293, dated August 16th, 1867, certifying him to be a creditor of the bank for the said sum of $5,818 00. On behalf of William Marvin he also claimed and received my certificate, certifying Marvin to be a creditor for the same amount. At the same time, as proctor for Edwin Gerard, the att'y in fact of claimants, or a portion of them, he also demanded and received my certificate, certifying said Gerard as such att'y, to be a creditor of this bank for the said sum of $90,139 02, and as proctor for others he took certificate for the balance of $14,585 87—certificates all of same date and numbered from 293 to 296, inclusive.

Thus the parties interested in proceeds of the brig and cargo have made themselves, by their own act, or at least that of their attorney of record, general creditors of this bank; and I submit if they are to come in now, ask the government to pay their claims, and that govern-
47 ment shall thus become a preferred creditor for these large amounts, it must be done by the order of a competent court.

You see there is no other course for me, for I have already certified to different parties for the entire claim. I suppose the facts can be

presented and the question made and decided in the chancery case already here depending, and I have to thank you for the notice in time to do so, as I am about preparing my answer as one of the defendants in that case.

Very respectfully, your ob'd't serv't,

C. CASE, *Receiver.*

EXHIBIT E.

District court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans.—May term, A. D. 1867.

NEW ORLEANS, *Tuesday, the 4th day of June*, 1867.

Court met pursuant to adjournment. Present, the Honorable Edward H. Durell, judge.

48 UNITED STATES *vs.* BRIG VOLANT AND CARGO. } No. 7776.

It is thereupon ordered and decreed that the said First National Bank of New Orleans pay out of the monies deposited in the bank in this case to Edward Briggs, for his services as aforesaid, the sum of five thousand eight hundred and eighteen dollars; * to William Marvin the sum of five thousand eight hundred and eighteen dollars;* and to Edwin Gerrard, attorney in fact as aforesaid, the sum of ninety thousand one hundred and thirty-nine dollars and two cents, ($90,139 02), the net proceeds of the sale of the said cargo, and that the residue of said proceeds remain on deposit, subject to the future order of the court for the owners of the vessel, amounting to $14,585 87.

"This reference approved."—D. Urban, Cl'k.

CLERK'S OFFICE:

I certify the foregoing to be a true copy of the decretal part of the judgment rendered in the above-entitled cause.

New Orleans, August 16th, 1867.

(Signed) K. LOEW, *D'y Clerk.*

49 *Complainants' replication to defendants' answer.—Filed July 6th*, 1868.

Circuit court of United States, district of Louisiana.—In chancery.

TERRILL & CO., BAUER AND OTHERS, *vs.* CHARLES CASE, H. R. HURLBURD. } No. 5553.

The plaintiffs come, and, for replication to the answers of the defendants, say that their bill is true, certain, just in all its parts, and they are ready to sustain the same by proof; that the answers of the defendants, except when they admit the bill, are uncertain, untrue, and unjust, and that the plaintiffs ought not to be barred by anything contained therein, and they pray for the relief prayed for in said bill.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL, *Pl'ffs' Att'ys.*

Answer of H. R. Hurlburd.—Filed July 11th, 1868.

U. S. circuit court.

50 TERRELL & Co., BAUER ET AL., Creditors First National Bank,
vs.
HON. C. CASE, RECEIVER, H. R. HURLBURD, Comp'r, &c. } No. 5553.

Circuit court of the United States, district of Louisiana.

The answer of H. R. Hurlburd, Comptroller of the Currency, to the bill of complaint filed in the said cause by A. Terrell & Co., and others, creditors of the 1st National Bank of New Orleans, against him and Charles Case, esq., and others, defendants.

The said defendant, saving and reserving all manner of exception to the bill of the said plaintiffs, for answer says—

That he is Comptroller of the Currency, as alleged in said bill, and submits, on behalf of the United States, to the decision of the court the claims of the United States to priority of payment over the alleged claims of the creditors of said bank that are not disputed.

1st. That the United States are lawfully entitled to claim the
51 balance due on a check of T. P. May, drawn in favor of his firm, and which was transferred to the United States. That the said check was certified to be good by the teller of said bank, and was accepted by the United States in settlement of a debt due from said May to them for $315,779 11.

2d. The United States claim a priority on account of deposits by the collector of internal revenue, amounting to $215,573 37, and what were in said bank at the date of their suspense.

3d. The United States claim a priority on account of bills of exchange purchased from the said bank by officers of the Post Office Department, under instructions from said department, for $3,528.

4th. The United States claim a priority for the sum of $10,888 37 deposits of revenue by the collector, A. P. Carley, in Texas.

5th. The United States claim a priority in their favor upon all deposits made in said bank by officers of the United States, and
52 especially the proceeds of the sale of the brig Volante and her cargo, amounting to $124,649 57, deposited in said bank by order of the district court of the United States for the district of Louisiana. The said defendant, further answering, says that the answer of his codefendant, Charles Case, the facts and conditions under which these claims to priority have arisen, and that he adopts the statements of that answer as true.

6th. This defendant denies that the creditors of said bank are in any manner authorized to appropriate any portion of the money received from the said bank, on account of T. P. May, to the payment of any portion of the of the United States, or that they are entitled to claim any advantage from the indemnity which the said May provided for Beauregard and others in their deeds conveying the lease of the Carrollton road, or in any contracts made with the said May.

This defendant answers that the contracts between the said
53 May and the officers of the United States are accurately stated in the answer of the defendant Charles Case, and his answer is adopted in all of its statements in regard to said contracts.

And now, having fully answered, the defendant prays that the bill may be dismissed at the costs of plaintiffs.

(Signed) SAM. H. TORREY, *U. S. Att'y.*

Entry at rules pro confesso against G. T. Beauregard and T. P. May.—Extract from the chancery order docket.

October rules, 1868, Monday, 5th.

TERRILL & CO., BAUER & ALS., CREDITORS of 1st National Bank,
vs.
CHARLES CASE, RECEIVER, & ALS. } No. 5553.

On motion of Henry B. Kelly, solicitor for complainants, and on showing to the court that process of subpœna herein issued has been
54 returned executed upon Thomas P. May, and that said defendant has failed to plead, answer, or demur to the complainants' bill within the time prescribed by the 18th rule of equity practice adopted by the Supreme Court, it is ordered that the allegations of complainants' bill be, and they are hereby, taken pro confesso as to said defendant Thomas P. May.

TERILL & CO., BAUER & ALS., CREDITORS of 1st National Bank,
vs.
CHAS. CASE, RECEIVER, & AL. } No. 5553.

On motion of Henry B. Kelly, solicitor for complainants, and on showing to the court that process of subpœna herein has been waived by the defendant G. T. Beauregard, and that the said defendant has failed to plead, answer, or demur to plaintiffs' bill within the time required by the 18 rule of equity practice adopted by the Supreme Court, it is ordered that the allegations of complainants' bill be, and they are hereby,
55 taken pro confesso as to said defendant G. T. Beauregard.

Motion and order.—Extract from the minutes of Thursday, December 24th, 1868.

TERRILL & CO. & ALS.
vs.
C. CASE, RECEIVER, & AL. } No. 5553.

On motion of H. B. Kelly, solicitor for plaintiff, it is ordered that the depositions of witnesses for plaintiffs, in answer to interrogatories on file, be taken before D. Urban, U. S. commissioner.

Interrogatories.—Filed December 24th, 1868.

Circuit court of the United States, district of Louisiana.

TERRILL & CO., BAUER ET AL., CREDITORS, &C.,
vs.
C. CASE, RECEIVER, & H. R. HURLBURD. } No. 5553.

Interrogatories to be exhibited to David B. Forbes, Lewis Meig, and L. B. Whittemore, witnesses for the plaintiffs, in said circuit
56 court.

1st int. Were you, or either of you, an officer or agent of the First

National Bank of New Orleans in the month of May, 1867; if so, what office did you hold?

2d. What are the facts connected with the failure of said bank; when were the operations of the bank suspended? State the day, and the hour of the day of the suspension; and when was the bank placed in the control of the Comptroller, or other officer of the Treasury Department, and who was the officer in charge?

3d. What are the circumstances of the making, certifying, and payment of a check drawn by T. P. May, in favor of T. P. May & Co., dated the 13th May, 1867, for the sum of three hundred and fifteen thousand seven hundred and seventy-nine $\frac{11}{100}$ dollars; who certified that the check was good; what reason did the said person have for making the certificate; and on whose application was the certificate made?

57 4th. When and where was the certificate made, and at what period of the day; how long before or after the suspension of the operations of the bank was this certificate made; was it known that a suspension was about to take place, or had taken place, at that time? State all the facts and conversations relative to the same when it occurred.

5th. Was the cashier consulted about it; what did he do or say relative to the same?

6th. What was the condition of the accounts of the said May on the 13th May, 1867, with the bank; did he have the amount of that check, or any amount due from the bank to him; what amount did the bank owe to him; what sum did he owe the bank?

7th. How did it happen that any sum stood to his credit on that day? Explain all the facts relative to his account with the bank, to show whether he was a debtor or creditor.

8th. When was the check, or any part of it, paid; was it known to the government officer or officers dealing with him of what his con-

58 dition was, and what his accounts were with the bank? State what information was given to them.

9. Who paid the check, or any part of it; was the payment made before or after the suspension of the bank; who paid the check, or any part of it, and under what circumstances?

10. State all the facts within your knowledge that will benefit the plaintiffs, or that will explain your testimony, or that will benefit any party in the cause, or will be material to the issue.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Pl'ffs.

" HENRY B. KELLY, *for Pl'ffs.*

Service of the above interrogatories is hereby acknowledged, and I decline to cross them, not deeming it important that I should do so.

(Signed) C. CASE, *Receiver 1st Nat. Bank of N. O.*,
(Signed) SAM. H. TORREY, *U. S. Att'y.*

59 *Answers of David B. Forbes and Lewis Meig to foregoing interrogatories.—Filed January 2d*, 1869.

U. S. circuit court.

TERRELL & CO. & ALS.
vs.
C. CASE, RECEIVER, & AL. } No. 5553.

REC. 299—2

Answers of David B. Forbes to interrogatories on file in above suit, and propounded, on behalf of plaintiffs, by D. Urban, U. S. commissioner, as per order on file.

David B. Forbes, being duly sworn, answers as follows:

To 1st interrogatory: I was an officer of the First National Bank of New Orleans, in May, 1867; I held the office of president.

To 2d interrogatory: On Saturday, the 11th of May, 1867, at 3 o'clock p. m., without having any idea of its suspension, the bank closed regularly as usual; on Monday, the 13th of May, 1867, when I went to
60 the bank, at the usual hour, 9 a. m., I found the bank in the possession and under the control, of Mr. John J. Knox, a Deputy Comptroller of Currency of the Treasury Department, who had taken charge of the bank without the bank having suspended; because, up to that time the bank had always paid its notes and other obligations on presentation, and none were protested until Tuesday, the 14th day of May, 1867, and after Mr. Knox had taken charge of the bank.

To 3d interrogatory: On Monday morning, I think it was, and between the hours of 10 and 12 in the forenoon, I was standing on the door-steps of the bank, with the receiving teller of the bank, Mr. E. S. Leeds, when Dr. M. T. Steele handed me Mr. May's check on the bank, signed in blank, to be filled up to the amount as then appeared to the credit of Mr. May on the books of the bank; I handed the check to Mr. Leeds, who thereupon referred to the books of the bank, and filled up said check to the amount of three hundred and fifteen thousand seven
61 hundred and seventy-nine $\frac{11}{100}$ dollars. In regard to this amount I know nothing of my own knowledge, but was informed by Mr. Leeds that that amount stood to the credit of Mr. May on the books of the bank; he also informed me that he had certified this check.

To 4th interrogatory: The certificate was made on Monday, the 13th May, 1867, between the hours of 10 and 12 in the forenoon of that day, and after the bank had been taken possession of by Mr. Knox, and it was known that the bank was taken possession of by the officer of the Comptroller of the Currency. The facts and conversations relative to said check are stated in my answer to the 3d interrogatory.

To 5th interrogatory: The cashier was not consulted about it; it was all done between Mr. Leeds and myself.

To 6th interrogatory: All I know of the condition of Mr. May
62 on the 13th May, 1867, is as certified by Mr. Leeds. I suppose he had that amount, as the books showed it to be due him. As for what sum he owed the bank, I am unable to say without referring to the books of the bank.

To 7th interrogatory: The money standing to the credit of Mr. May must have been received by the teller in the ordinary course of deposits. I am satisfied that he had deposited that amount, as he had frequently made deposits, and of very large amounts. I can't explain the fact of his being either a debtor or creditor of the bank without referring to the books of the bank, but I feel perfectly satisfied that he was not indebted to the bank to the amount of the check.

To 8th interrogatory: I don't know when the check or any part of it was paid. I know nothing more on the subject of this interrogatory.

To 9th interrogatory: I know nothing of the subject inquired of.

To 10th interrogatory: All that I can state further that the
63 notes and other obligations of the bank were not protested until the 14th of May, 1867, which was after the bank had been taken possession by the officer of the Comptroller of the Currency. That is all

I know that is material to the issue in the cause, or beneficial to either party in the cause.

(Signed) D. B. FORBES.

Sworn to and subscribed before me this 2d January, 1869.

[SEAL.] (Signed) D. URBAN, *U. S. Comm'r.*

Louis Meig, being duly sworn, answers as follows:

To 1st interrogatory: I was an officer of the First National Bank of New Orleans in the month of May, 1867. I held the office of exchange clerk and acting cashier.

To 2d interrogatory: The bank suspended on the 13th of May, 1867. The only facts I know of in regard to the failure of the bank was unfortunate speculations. The bank was taken possession of by
64 Mr. Knox and Mr. Miline on Sunday, the 12th day of May, 1867. I was notified of their taking possession on Sunday, about 1 o'clock in the afternoon, at my residence, by means of an order from General Spinner to deliver up to them the books and contents of the vault for examination.

To 3d interrogatory: As the matters inquired of in this interrogatory did not appertain to my official duties, I cannot answer it.

To 4th interrogatory: I answer this interrogatory in the same manner as I have answered the 3d interrogatory.

To 5th interrogatory: I was acting cashier, but was not consulted relative to this check.

To 6th interrogatory: All I know is that Thomas P. May was a frequent depositor with the bank, and usually of large amounts; and as to whether he was a creditor or debtor of the bank, I could not state without referring to the books of the bank.

To 7th interrogatory: I cannot answer without referring to the books of the bank.

65 To 8th interrogatory: I cannot state when or whether any part of the check, or the check itself, was paid. I know nothing else of the subject inquired of in this interrogatory.

To 9th interrogatory: I know nothing of the subject inquired of in this interrogatory.

To 10th interrogatory: All I know is that on Tuesday, the 14th day of May, 1867, which was after the bank had been taken possession of by Mr. Knox and Mr. Miline, a note of the amount of ($5) five dollars was handed to Mr. Whitmore, the paying teller, and who refused paying said note by the orders and direction of Mr. Knox. I know of nothing else beneficial to either party in the cause or material to the issue in the cause.

(Signed) LOUIS MEIG.

Sworn to and subscribed before me this 2d January, 1869.

(Signed) D. URBAN, *U. S. Commissioner.*

66 *Interrogatories propounded to G. T. Beauregard.—Filed December 24th*, 1869.

Circuit court of the United States, district of Louisiana.

TERRELL & CO., BAUER ET AL., CREDITORS, &c., *vs.* C. CASE, RECEIVER; H. R. HURLBURD, COMPTROLLER, et al. } No. 5553.

Interrogatories to be exhibited to G. T. Beauregard, a material witness for the plaintiffs in the suit above named, pending in said circuit court.

1st interrogatory: Were you a party concerned in a partnership or other connection with Thomas P. May and A. C. Graham, for conducting the operations of the New Orleans and Carrolton Railroad Co? If yea, state the nature of that relation.

2d interrogatory: Did your association or partnership keep an account at the First National Bank in New Orleans in 1866 and 1867? Please state the conditions of that account on the 15th day of September, 1866; and how was that account subsequently made good
67 to the bank?

3d interrogatory. The First National Bank is in possession of a note, dated 14th September, 1866, made in your name and signed for you by T. P. May, payable on demand to the order of the First National Bank of New Orleans, for $40,000, and endorsed by F. J. Herron; was that note made by you or by your authority?

4th interrogatory. What was the state of the accounts between your firm or connection on the 19th March, 1867, and the said First National Bank, and what measures were taken by you to make that account good? State the cause of the overdrafts on the bank; who made them, and in what manner was the firm or connection liable for them? What was the debt due to the bank which appeared against G. T. Beauregard, lessee, and who was the party who made the debt, and who was the real debtor to the bank? Explain fully and at large all you know of the mat-
68 ter, and how the conditions arose, which appear in said accounts of overdrafts, discount of your note, and taking other securities or papers for other portions.

5th interrogatory. What was the debt due by you, and what portion of the debt belonged exclusively to T. P. May, and how was it his exclusively?

6th interrogatory. How was that debt discharged to the bank; did the United States assume it, and how?

7th interrogatory. If you know of any fact material to this issue, or which will explain your testimony, or be of advantage to either party, answer as to the same fully, and set forth your knowledge, explanation, at large.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
For Pl'ffs.

(Signed) HENRY B. KELLY, *for Pl'ffs.*

Service of the above interrogatories on me is acknowledged. I see no necessity for crossing them.

(Signed) C. CASE, *Receiver 1st Nat'l B'k of N. O.*,

(Signed) SAM. H. TORREY, *U. S. Att'y.*

69 *Answers of G. T. Beauregard to foregoing interrogatories.—Filed January 2d*, 1869.

United States circuit court.

TERRELL & AL. *vs.* C. CASE, RECEIVER, & AL. } No. 5553.

Answers of G. T. Beauregard to the interrogatories filed on December 24th, 1868, on behalf of plaintiffs.

To the 1st interrogatory: I was concerned as a partner with said May

and Graham in the lease of the said Carrolton railroad. The nature of the relation is explained in the act of copartnership passed on the 18th day of April, 1866, before Amedee Ducatil, notary public, which is hereby referred to.

To the 2d interrogatory: Yes; as a depositor. On the 15th September, 1866, there was a balance of $7,200 00 to the credit of the copartnership.

70 To the 3d interrogatory: Said note was not drawn by me but by T. P. May. In making said note I presume Mr. May did so under the pretended authority of a power of attorney from me; but I consider that said note was not made under any authority from me, but in violation of the articles of copartnership between said T. P. May and A. C. Graham, as per notarial act passed before Amedee Ducatel, notary public, on the 18th day of April, 1866, which required that said T. P. May and A. C. Graham should furnish the sum of three hundred thousand dollars ($300,000) for carrying out the objects of said copartnership, which amount had not been furnished by them up to the date of said note of 14th September, 1866, they having then furnished only the sum of one hundred and twenty-eight thousand dollars, ($128,000,) instead of two hundred and forty thousand dollars, ($240,000,) which they should have furnished up to that time, as per said articles of copartnership.

71 To the 4th interrogatory: On the 19th of March, 1867, the account of said association (which stood in my name alone, as lessee, on the books of the bank) was overdrawn to the amount of $123,210 83. I had nothing whatever to do with furnishing funds for operating said railroad, as per terms of agreement already referred to; all sums thus required were to be furnished by said May and Graham up to the amount of three hundred thousand dollars, ($300,000.) The said T. P. May had instructed the cashier of the association to prepare his checks on the First National Bank of this city, regardless of the condition of the account with said bank, and that he, said T. P. May, would always make the account good. Many of such checks, for instance those from May 8th, 1866, to October 20th, 1866, and at other times, were signed by T. P. May himself, acting for me; other checks were signed by A. C. Graham, in my name, probably under authority from said May, but not under power of attorney directly from me.

72 In order to have the account made good, the cashier called on Mr. May and notified him of the overdraft, and was told by Mr. May that it was all right, and to credit him, said May, with the amounts of the overdrafts as advances made by him under the contract of copartnership, and said May was credited accordingly, and thus the overdrafts were settled from time to time. Moreover the said T. P. May and A. C. Graham were regularly furnished with written monthly statements showing the exact financial condition of the association. The cause of the overdrafts was the failure of T. P. May and A. C. Graham to make the stipulated advances for the association and the repeated authorization of Mr. May to overdraw. The debt appearing on 19th March, 1867, to be due to the bank by me, as lessee, was $123,210 83. T. P. May made the debt by authorizing the overdrafts, and having the amounts thereof credited to him, and he (May) was thus the real

73 debtor to the bank. To cover that balance, Mr. May, about the 4th of April, 1867, caused an entry to be made on the bank-book, under date of March 19th, 1867, crediting me with $125,000 as cash deposited. I do not know anything of any other securities or papers. I had nothing to do with raising the money for the association; that was exclusively the business of T. P. May and A. C. Graham.

To the 5th interrogatory: I have answered this question as well as I understood it in my several answers above.

To the 6th interrogatory: I do not know how the debt was discharged to the bank. I had nothing to do with that. I have always understood from Mr. Alex'r Bonneval, one of the purchasers of May and Graham's interests in the said lease, that the government had assumed or was solely responsible for this debt or liability of T. P. May to the bank.

I suppose the act of sale of said interests, passed before G. Le Gar-
74 deur, jr., notary public, August 20th, 1867, ought to show that fact.

I was absent from the city at that time, having left for the North at the beginning of that month.

To the 7th interrogatory: I know of none.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 2d January, 1869.

[SEAL.] (Signed) D. URBAN,
U. S. Commissioner.

Interrogatories propounded to T. P. May.—Filed December 24th, 1868.

Circuit court of the United States, district of Louisiana.

TERRELL & CO., BAUER ET AL., CREDITORS, *vs.* C. CASE, RECEIVER; H. R. HURLBURD, COMPTROLLER. } No. 5553.

Interrogatories to be exhibited to Thomas P. May, a material witness for the plaintiffs in this cause, pending in the said circuit court in chancery.

75 1st interrogatory: Did you pass to any officer of the United States a check drawn by you, and dated the 13th May, 1867, for $315,779 11, in favor of Thomas P. May & Co., upon the First National Bank of New Orleans, which check bears the endorsement of said firm? When did you draw that check; when did you procure a certificate of it, as good, by the teller; and when did you deliver it to the officer of the United States? State the hour of the day of its being drawn, of the certificate of the teller and of its endorsement and transfer to the officer, as nearly and fully as possible.

2d interrogatory: What sum was the bank owing to you, when you drew that check, as a matter of fact, and irrespective of any entries on the books? What deposit of yours did this sum represent; or did it represent any deposit or discount by you in the said bank, and what and under what circumstances?

3d interrogatory: What was the reason for drawing the check, and of its transfer to the United States? Who received it from you?

76 4th interrogatory: What information did you give to the said officers of the state of your accounts in this behalf? Did you represent the check to be absolutely good, or did you give it for the purpose of covering any balance you might have in the bank? What were the facts of the making and transfer of this debt?

5th interrogatory: What are the facts in relation to the account standing on the books of the bank in the name of G. T. Beauregard, lessee? Did that firm or that person owe the bank; if yea, on what account? What overdrafts were made, and by whom; and how were

they closed up; with what securities, notes, or bills, and what has been done with them, and what was their value?

6th interrogatory: State whether the debt due to the bank was provided for by you. State in what manner. Explain the draft on A. C. Graham, of $125,000, dated 19th March, 1867, payable in 45 days.
77 What was done with it, and what was its value? Was that draft stamped, sent forward, or ever collected? Why was it drawn, and on what fund? Inform us all of the particulars of this account, and what was due the bank on it.

7th interrogatory. When did the bank suspend payment? Who took possession of the same, and when was possession taken under orders from the Treasury Department? Was your check above mentioned drawn by you and passed by you, with a knowledge of its failing condition? Was it received by the officer to whom it was delivered, with the same knowledge? State the facts relative to this.

8th interrogatory. Was the same officer or officers engaged in the settlement with you with the closing of the operations of the bank, or had the one any connection with the others? Who were the different officers employed, and what were their connection or relation in this business?

78 9th interrogatory. If you know of any facts material to this inquiry, or that will explain your testimony, or be of any service to either party, or will benefit the plaintiffs, state them fully and at large.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
(Signed) HENRY B. KELLY, *for Plaintiffs.*

I acknowledge service of the above interrogatories, and do not desire to cross them.

(Signed) C. CASE, *Receiver, &c.*,
(Signed) SAM. H. TORREY, *U. S. Att'y.*

Answers of T. P. May to the foregoing interrogatories.—Filed January 4th 1869.

U. S. circuit court

TERRELL & AL. *vs.* C. CASE, RECEIVER, ET AL. } No. 5553.

Answers of Thomas P. May to interrogatories on file in above suit, and propounded on behalf of plaintiffs by D. Urban, U. S. commis-
79 sioner, as per order on file.

Thomas P. May, being duly sworn, answers as follows:

To 1st interrogatory: Answer. By the advice of my counsel I decline to testify in this case, upon the ground that my testimony may tend to my disadvantage and injury in the case of the United States versus me, now pending upon indictment in this court.

To 2d interrogatory: I decline answering for the reasons above stated.
To 3d interrogatory: I decline answering for the reasons above stated.
To 4th interrogatory: I decline answering for the reasons above stated.
To 5th interrogatory: I decline answering for the reasons above stated.
To 6th interrogatory: I decline answering for the reasons above stated.
To 7th interrogatory: I decline answering for the reasons above stated.

To the 5th interrogatory: I have answered this question as well as I understood it in my several answers above.

To the 6th interrogatory: I do not know how the debt was discharged to the bank. I had nothing to do with that. I have always understood from Mr. Alex'r Bonneval, one of the purchasers of May and Graham's interests in the said lease, that the government had assumed or was solely responsible for this debt or liability of T. P. May to the bank.

I suppose the act of sale of said interests, passed before G. Le Gar-
74 deur, jr., notary public, August 20th, 1867, ought to show that fact.

I was absent from the city at that time, having left for the North at the beginning of that month.

To the 7th interrogatory: I know of none.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 2d January, 1869.

[SEAL.] (Signed) D. URBAN,
U. S. Commissioner.

Interrogatories propounded to T. P. May.—Filed December 24th, 1868.

Circuit court of the United States, district of Louisiana.

TERRELL & CO., BAUER ET AL., CREDITORS, *vs.* C. CASE, RECEIVER; H. R. HURLBURD, COMPTROLLER. } No. 5553.

Interrogatories to be exhibited to Thomas P. May, a material witness for the plaintiffs in this cause, pending in the said circuit court in chancery.

75 1st interrogatory: Did you pass to any officer of the United States a check drawn by you, and dated the 13th May, 1867, for $315,779 11, in favor of Thomas P. May & Co., upon the First National Bank of New Orleans, which check bears the endorsement of said firm? When did you draw that check; when did you procure a certificate of it, as good, by the teller; and when did you deliver it to the officer of the United States? State the hour of the day of its being drawn, of the certificate of the teller and of its endorsement and transfer to the officer, as nearly and fully as possible.

2d interrogatory: What sum was the bank owing to you, when you drew that check, as a matter of fact, and irrespective of any entries on the books? What deposit of yours did this sum represent; or did it represent any deposit or discount by you in the said bank, and what and under what circumstances?

3d interrogatory: What was the reason for drawing the check, and of its transfer to the United States? Who received it from you?

76 4th interrogatory: What information did you give to the said officers of the state of your accounts in this behalf? Did you represent the check to be absolutely good, or did you give it for the purpose of covering any balance you might have in the bank? What were the facts of the making and transfer of this debt?

5th interrogatory: What are the facts in relation to the account standing on the books of the bank in the name of G. T. Beauregard, lessee? Did that firm or that person owe the bank; if yea, on what account? What overdrafts were made, and by whom; and how were

they closed up; with what securities, notes, or bills, and what has been done with them, and what was their value?

6th interrogatory: State whether the debt due to the bank was provided for by you. State in what manner. Explain the draft on A. C. Graham, of $125,000, dated 19th March, 1867, payable in 45 days.

77 What was done with it, and what was its value? Was that draft stamped, sent forward, or ever collected? Why was it drawn, and on what fund? Inform us all of the particulars of this account, and what was due the bank on it.

7th interrogatory. When did the bank suspend payment? Who took possession of the same, and when was possession taken under orders from the Treasury Department? Was your check above mentioned drawn by you and passed by you, with a knowledge of its failing condition? Was it received by the officer to whom it was delivered, with the same knowledge? State the facts relative to this.

8th interrogatory. Was the same officer or officers engaged in the settlement with you with the closing of the operations of the bank, or had the one any connection with the others? Who were the different officers employed, and what were their connection or relation in this business?

78 9th interrogatory. If you know of any facts material to this inquiry, or that will explain your testimony, or be of any service to either party, or will benefit the plaintiffs, state them fully and at large.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
(Signed) HENRY B. KELLY, *for Plaintiffs.*

I acknowledge service of the above interrogatories, and do not desire to cross them.

(Signed) C. CASE, *Receiver, &c.,*
(Signed) SAM. H. TORREY, *U. S. Att'y.*

Answers of T. P. May to the foregoing interrogatories.—Filed January 4th 1869.

U. S. circuit court

TERRELL & AL. *vs.* C. CASE, RECEIVER, ET AL. } No. 5553.

Answers of Thomas P. May to interrogatories on file in above suit, and propounded on behalf of plaintiffs by D. Urban, U. S. commis-

79 sioner, as per order on file.

Thomas P. May, being duly sworn, answers as follows:

To 1st interrogatory: Answer. By the advice of my counsel I decline to testify in this case, upon the ground that my testimony may tend to my disadvantage and injury in the case of the United States versus me, now pending upon indictment in this court.

To 2d interrogatory: I decline answering for the reasons above stated.
To 3d interrogatory: I decline answering for the reasons above stated.
To 4th interrogatory: I decline answering for the reasons above stated.
To 5th interrogatory: I decline answering for the reasons above stated.
To 6th interrogatory: I decline answering for the reasons above stated.
To 7th interrogatory: I decline answering for the reasons above stated.

80 To 8th interrogatory: I decline answering for the reasons above stated.

To 9th interrogatory: I decline answering for the reasons above stated.

(Signed) T. P. MAY.

Sworn to and subscribed before me this 4th January, 1869.

(Signed) D. URBAN.
U. S. Commissioner.

Motion for publication of testimony.—Extract from the minutes of Monday, March 1st, 1869.

A. TERRILL & CO. & AL. *vs.* C. CASE, RECEIVER. } No. 5553.

On motion of H. B. Kelly, and Campbell, Spofford & Campbell, solicitors for the complainants, publication of the testimony is made, and it is ordered that the cause be set down for hearing on the 17th March, 1869, at 11 a. m., and that all parties be notified thereof.

Marshal's return.

81 Received March 2d, 1869, by the U. S. marshal, and on same day of March, 1869, served copies of within motion and order on parties named herein, in manner following, viz: P. H. Morgan, in hands J. W. Gurley, clerk at office in custom-house building; J. D. Rouse, personally, at office corner Magazine & Natchez streets, in this city.

New Orleans, March 3d, 1869.

(Signed) S. W. REED,
Dy U. S. Marshal.

Motion and order, cause fixed.—Extract from the minutes of Wednesday, March 17th, 1869.

TERRELL & CO. ET AL., CREDITORS OF 1ST Nat. Bank, *vs.* CHARLES CASE, RECEIVER. } No. 5553.

On motion of Chas. Case, esq., it is ordered by the court that this cause be taken up on the day succeeding the closing of the Wine
82 case in the U. S. district court, No. 8469, and that the parties interested be notified hereof.

Marshal's return

Received March 18th, 1869, by the U. S. marshal, and on same day of March, 1869, served copies of within order on parties named herein in manner following, viz: H. B. Kelly, personally, at U. S. court-room; Campbell, Spofford & Campbell, in hands of J. A. Campbell, at U. S. court-room; U. S. attorney, in hands of J. W. Gurley, clerk office in custom-house building.

Returned, New Orleans, March 19th, 1869.

(Signed) J. W. SAWYER,
Dy U. S. Marshal.

Motion and order, cause specially assigned.—Extract from the minutes of Saturday, March 20th, 1869.

TERRELL & CO. ET ALS., CREDITORS 1ST NATIONAL BANK,
vs.
CH'S CASE, RECEIVER; H. B. HURLBURD, Comptroller.
No. 5553.

83 Ordered, that this cause be specially assigned for trial on Monday, 29th inst., at 11 a. m., and that the parties interested be notified hereof.

Notice of trial.—Issued March 20th, 1869.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

TERRELL & CO. & ALS., CREDITORS 1ST NATIONAL BANK,
vs.
C. CASE, RECEIVER, ET AL.
No. 5553.

You are hereby notified that this case is specially assigned for trial for Monday, the 29th day of March, 1869, A. D., at 11 o'clock a. m.

By order of court.

Witness my hand and seal of the said court at New Orleans this 20th day of March, A. D. 1869.

[SEAL.] (Signed) F. B. VINOT, *Ify Clk.*

To CAMPBELL, SPOFFORD & CAMPBELL,
H. B. KELLY,
J. D. ROUSE, and
U. S. ATTORNEY.

84 *Marshal's return.*

Received March 22d, 1869, by the U. S. marshal, and on same day of March, 1869, served copies of within notice on parties named herein in the manner following, viz: Campbell, Spofford & Campbell, in hands of J. A. Campbell, member of firm, office 27 Commercial Place; J. D. Rouse, in hands of Charles Case, at office corner of Natchez & Magazine; U. S. attorney, in hands of J. W. Gurley, clerk at office in custom-house building; H. B. Kelly, personally, on banquet, front of 27 Commercial Place.

New Orleans, March 23d, 1869.

(Signed) J. W. SAWYER,
Ify U. S. Marshal.

Hearing and order.—Extract from the minutes of Monday, March 29th, 1869.

TERRELL & CO. & AL.
vs.
CH'S CASE, RECEIVER, & AL.
No. 5553.

85 This cause came on to be heard on the bill, answer, exhibits, and proofs, and was argued by counsel; and the court, upon considera-

tion of the same, refers the same to John B. Weller, as special commissioner, to state the accounts between the said T. P. May, individually, and also as member of the firm of G. T. Beauregard & Co., and the First National Bank of New Orleans, as they stood on the 13th day of May, 1867, without reference to said certified check of $315,779 11, and also to state any payment on such accounts or liabilities existing as offsets against the same on or since said 13th May, 1867; and the court further decrees that said check of $315,779 11 be held invalid as creating any priority of payment in favor of the United States, and only valid as assigning to said United States the same rights that said May had as against said bank on said 13th May, 1867, and said commissioner is instructed to charge the United States with their assumption of the debt of May to said bank on account of Beauregard and May, and that he report to this court.

86 *Note of evidence.—Filed March 29th*, 1869.

U. S. circuit court, district of Louisiana.

TERRELL & CO. & AL. *vs.* C. CASE, RECEIVER, & AL. } No. 5553.—Note of evidence.

Plaintiffs offered documents A, B, and C; also answers of Beauregard, filed 2d January, 1869; of T. P. May, filed January 4th, 1869; and of Forbes, filed 2d January, 1869.

Document A, offered by plaintiffs and filed March 29th, 1869.

Copartnership between G. Toutant Beauregard and Messrs. Thomas P. May and Augustus C. Graham.

UNITED STATES OF AMERICA:

State of Louisiana, City of New Orleans:

Be it known that this day, the eighteenth of April, in the year
87 of our Lord eighteen hundred and sixty-six, and in the 93d of American independence, before me, Amedee Ducatel, notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in presence of the undersigned witnesses, personally came and appeared Mr. Gustave Toutant Beauregard, residing in this city, of the first part; Mr. Thomas P. May, also of this city, of the second part; and Mr. Augustus C. Graham, residing also in this city, of the third part; which said appearers declared that for and in consideration of the mutual credit and faithful confidence that each of them has reposed in the others, and with a view to their mutual advantage and benefit, they have entered into the following articles of agreement:

ARTICLE 1. Gustave Toutant Beauregard shall obtain in his name, but for the joint account of the appearers, the lease of the New
88 Orleans and Carrollton railroad; he shall take charge, conduct, manage, and direct the undertaking at a salary of five thousand dollars per annum, payable monthly, at the rate of four hundred and sixteen dollars sixty-six cents and two-thirds per month, promising and binding himself to do his best endeavors, to the utmost of his skill and ability, for their mutual advantage; and also he shall have the right to select and appoint his assistants, with proper salaries.

ARTICLE 2. The said Thomas P. May and Augustus C. Graham shall

furnish the amount of money necessary to carry out the enterprise, which amount shall not exceed one hundred and fifty thousand dollars for each of them, making an aggregate amount of three hundred thousand dollars. The said T. P. May and A. C. Graham shall be reimbursed in capital and interest at the rate of eight per cent. per annum from the annual net profits of the enterprise.

ARTICLE 3. After the payment of said capital and interest as
89 aforesaid, the annual net profits, gains, and increase as shall arise shall be equally divided between the said appearers, share and share alike; and also all losses as shall happen by bad debts or otherwise shall be paid and borne equally between them.

ARTICLE 4. The said T. P. May and A. C. Graham promise and bind themselves to pay the above sum of one hundred and fifty thousand dollars, each of them, in manner following, to wit: Twenty thousand dollars, each of them, immediately after the signing of the lease by the New Orleans and Carrolton Railroad Company; then twenty thousand dollars (each of them) per month during the next four succeeding months; then ten thousand dollars per month (should they be required by the lessee, G. T. Beauregard) until final payment of the sum of one hundred and fifty thousand dollars by each of them.

ARTICLE 5. There shall be kept just and true books of accounts,
90 wherein shall be entered as well all the money received and expended in and about the said enterprise, as also all commodities and merchandises bought by reason and on account of the present copartnership between the appearers, and all other matters and things in any wise belonging or appertaining thereto, so that either of them may at any time have free access thereto.

ARTICLE 6. On the first of each month a statement of amounts received and expended during the preceding month shall be furnished to the said Thomas P. May and A. C. Graham by said G. T. Beauregard, who will make his deposits in the First National Bank in this city.

ARTICLE 7. This copartnership shall continue from the date of the lease by the said New Orleans and Carrolton Railroad Company to the said G. T. Beauregard for and during and to the full end and term of twenty-five years next ensuing.

91 ARTICLE 8. In case any of the said copartners shall happen to decease before the expiration of the said term of twenty-five years, the present copartnership shall continue between the surviving copartners and the heirs and assigns of the deceased under the same charges, clauses, and conditions as above set forth.

And the said parties hereby bind themselves, their heirs, executors, and administrators, for the performance of all and every of the above agreements.

Thus done, passed, and concluded, in my office at New Orleans, the day, month, and year first above written, in presence of Messrs. Henry Ducatel and Andre Pelaune, competent witnesses, who have signed these presents, together with the said appearers, and me, the notary.

(Signed) T. P. MAY.
A. C. GRAHAM.
G. T. BEAUREGARD.
HENRY DUCATEL.
A. PELAUNE.
AMEDEE DUCATEL, *Not. Pub.*

A true copy:
[SEAL.] (Signed) AMEDEE DUCATEL, *Notary.*

[5c. int. rev. stamp affixed & cancelled.]

92 *Document B, offered by plaintiffs and filed March 29th, 1869.*

Assignment of property by Thomas P. May to United States of America.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas P. May, of this city, who declared that, in consideration of the sums of money due by him to the United States of America, the exact amount of which is to be ascertained upon an adjustment of his account with said United States, he
93 does, by these presents, in part payment of said indebtedness, cede, transfer, assign, and set over, with all legal warranties, unto the said United States of America, represented herein by John Jay Knox, special agent of said United States of America, and here present, and accepting for the said United States, the property, whether real, personal, or mixed, hereinafter mentioned and referred to, viz:

Cash in the First National Bank of New Orleans, three hundred and fifteen thousand seven hundred and seventy-nine dollars	$315,779 00
The steamer Virgin, valued at the sum of seventy-five thousand dollars	75,000 00
Three lots of ground, situate at the corner of Canal and Marais street, together with the buildings thereon, purchased by said May from Geo. Ruleff, by act before James Graham, notary, on the 2d August, 1865, which real estate, with the household furniture on the premises, is hereby valued at fifty thousand dollars	50,000 00
J. O. Nixon's promissory note, dated April 25th,
94 1867, made to his own order, for the sum of twenty-five thousand dollars	25,000 00
Fourteen hundred and ten shares, of one hundred dollars each, in the capital stock of the First National Bank of New Orleans, valued at one hundred and forty-one thousand dollars	141,000 00
A certain plantation, situate in the parish of St. Charles, in this State, known as the Payne plantation, the same being the property of said May, although the title thereto is in the name of A. C. Graham, as per his act of purchase thereof, passed before A. Mazureau, a notary, in this city, on the 6th February, 1866, said plantation being valued at forty-four thousand dollars.	44,000 00
The interest of the said May in and to the Carrolton Railroad Company, and the property, stock, and appurtenances thereto belonging, the value of which is [is] estimated at the sum of four hundred and eighty thousand dollars	480,000 00
The interest of said May in commission business in
95 this city, which is valued at sixty-six thousand dollars	66,000 00
	$1,196,779 00

The estimated value of the property so ceded and transferred, the sum of one million one hundred and ninety-six thousand seven hundred and seventy-nine dollars.

And the said Thomas P. May hereby promises and binds himself, without unnecessary delay, to sign and execute all acts or other instruments of writing that may be requisite and necessary to give to the United States of America, or their assigns, full, complete, and valid titles to the property herein transferred; to have and to hold the real and personal property aforesaid unto the United States of America, or their assigns, forever.

And the said May furthermore binds himself personally, and as the agent and attorney in fact of the persons interested with him in the property herein referred to, and hereby transferred, not to alienate or encumber the same to the prejudice of these presents.

96 Thus done and passed in my office at New Orleans aforesaid, in the presence of Samuel H. Torry and James Graham, competent witnesses, both of the city, who hereunto sign their names, with the parties and me, the said notary, the day and date aforesaid.

(Signed) T. P. MAY.
JOHN JAY KNOX.
SAM. H. TORRY.
JAS. GRAHAM.
ANDREW HERO, JR., *Not. Pub.*

A true copy of the original act duly stamped in my office.
N. O., 16th March, 1869.
[SEAL.] (Signed) ANDREW HERO, JR., *Not. Pub.*

[5-c. int. rev. stamp affixed and cancelled.]

Document C, offered by plaintiffs, and filed March 29th, 1869.

NOTE.—This document is lost or mislaid, and cannot be found after diligent search.

Attest: D. URBAN, *Clerk.*

97 *Testimony of W. W. Howe.—Filed May 22nd*, 1869.

U. S. circuit court.

TERRELL, &c.,
vs.
C. CASE, RECEIVER, &c.

"On claim for priority for $17,326 93, by W. W. Howe, att'y."

In May, 1867, the case of Bushnell vs. McKee, Haifleigh, &c., U. S. circuit court, No. 5070, having been decided in favor of my clients, and the fund deposited by the clerk, by order of court, in the First National Bank, ordered paid to them, I took a check therefor from the clerk and claimed therefor a preference on the funds in the hands of the receiver. I called on the receiver, made this claim, put it in writing, and delivered the document to him, to be forwarded as well to the Controller of the Currency.

I afterwards, & on the 5th of July, 1867, took a certificate from the receiver to preserve the proof of the amount, and with the distinct

98 understanding that I was not thereby to waive my written claim

for priority. I still hold the certificate subject to this claim of preference. Its amount is $17,326 93.

I understand that, if necessary, Col. Case will furnish the correspondence.

(Signed) W. W. HOWE.

The above statement is correct.

(Signed) C. CASE, *Receiver.*

We consent that the above be received in evidence in this case as if offered and received on the trial hereof, waiving affidavits.

(Signed) J. A. CAMPBELL, *for Pl'ffs.*
(Signed) P. H. MORGAN, *U. S. Att'y.*

Report of master in chancery.—Filed May 27th, 1869.

U. S. circuit court.—In chancery.

TERRILL & CO. ET AL., CREDITORS OF FIRST National Bank,
vs.
CHAS. CASE, RECEIVER; H. R. HURLBURD, Comptroller, &c. } No. 5553.

99

The undersigned, master in chancery, to whom this case was referred under the following order, "to state the accounts between the said T. P. May, individually, and also as member of the firm of G. T. Beauregard & Co., and the 1st National Bank of New Orleans, as they stood on the 13th day of May, 1867, without reference to said certified check of $315,779; and also to state any payments on such accounts or liabilities existing as offsets against the same on or since said 13th of May, 1867, and the court further decrees that said check of $315,779 be held invalid as creating any priority of payment in favor of the United States, and only valid as assigning to said United States the same right that said May had, as against said bank, on said 13th May, 1867; and said commissioner is instructed to charge the United States with their assumption of the debt of May to said bank on account of Beauregard

100

and May, and that he report to this court," respectfully begs leave to report that on the 13th day of May, 1867, when the agents of the Treasury Department of the United States took possession of the First National Bank in this city—

Thomas P. May had a nominal credit in that institution of. $315,779 00

Whilst his actual credit was as follows:

Currency	$80,000 00
Gold, including premium	14,030 82
	$94,030 82
His liabilities were at that time, as acceptor or indorser, upon bills then past due	$9,543 67
He was also liable on that day as drawer, acceptor, or indorser, upon bills about to mature, in the sum of	$179,184
Making his individual liabilities	$188,727 67

He was also indebted on account of the partnership in the

New Orleans and Carrolton railroad, which stood on the books of the banks in the name of G. T. Beauregard, lessee, in the sum of..... $237,008 89

Making his total liabilities then due, or soon to fall due..... 427,736 56
Deduct from this the amount he had on deposit..... 94,039 82

And we find the excess of liabilities $333,705 74

Since that time no payments whatever have been made by said May on his individual account, but on the 14th of May he transferred all of his interest in the railroad to the United States, and on the 21st of August ensuing, the government, in conveying this interest to Hernandez and others, assumed the payment of..... $112,002 89
Which reduced his indebtedness on account of the railroad to the sum of..... $125,006 00
This would leave his total liabilities to the bank..... $221,702 85
By the terms of the copartnership the capital was to be furnished by May and Graham to the extent of..... $300 000
And Beauregard was to be general superintendent of the road at a fixed salary, and when the capital was
102 reimbursed with 8 per cent. interest from the earnings of the road, then Beauregard was to have a one-third interest in the profits. It seems that all the money was advanced by May, and hence he is charged with the debt, treating Graham as a merely nominal partner. If, however, Graham is regarded as a real partner, then he is bound for one-half of this debt, and this will reduce May's liability on account of the railroad to the sum of..... 62,503

Leaving his liabilities on ac. of the road..... $156,199 85

Although not called upon by the order of the court in this case to state the account between the United States and the bank, the commissioner begs permission of the court to state it as it appears upon the face of the papers before him, and thus avoid the probable necessity of a farther reference. At all events it will save your honor some time and labor in the investigation of this case.

In regard to the assets of the bank, the United States demands priority over the following classes:

103 Amount deposited by collector of internal revenue in Louisiana..... 215,573 37
Collector of revenue in Texas..... 10,888 37
Claim to credit of Comm'r Int. Rev..... 148 80
Draft of P. O. Department..... 3,528 00
Proceeds sale of Volanté..... 124,469 57
Balance of check drawn by May for $315,779..... 221,748 18

Making total am't of priority claimed..... $576,356 29

Upon the other hand the government holds assets of the bank as follows:

Bonds to secure deposits made by agents of the Treasury Department		$250,000
Bonds to secure circulation		200,000
Cash collected by Rec'r C. Case		285,592 47
Interest on bonds (say)		42,133 56
Rec'd by Mr. Knox on the draft for $315,779		94,030 82
Assumed by government		112,002 89
		983,759 74
Deduct circulation	180,000	
Deduct am't entitled to priority	230,136 44	
	$410,136 44	410,136 44
Balance due the bank		$573,623 30

This does not embrace the interest which may have accumulated on the bonds since the first of the present month. It is proper to
104 remark that the interest on the bonds was in gold, and that some of them amounting to, say $150,000, have been sold by the government. I must also remark that the P. O. draft has been paid to the department by the receiver, Col. Case, under order of the government.

Complainants deny that government is entitled to a priority over the other creditors in any of the above claims, because, as is alleged, the act of June 3d, 1864, establishing a banking system provides a mode for distributing the assets of insolvent banks, and this must be pursued. The 50th section of this act provides that "from time to time the Comptroller, after full provision shall have been first made for refunding to the United States any such deficiency in redeeming the notes of such association as is mentioned in this act, shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction, or adjusted in a court of competent jurisdiction." (Brightley's Digest, vol 2, p. 63)

The 48th section of the same act declares that "it shall be law-
105 ful for the Secretary of the Treasury from time to time to make such regulations respecting the disposition to be made of such circulating notes after presentation for pay[2]ment thereof as aforesaid and respecting the perpetuation of the evidence of the payment thereof as may seem to him proper, but all such notes, on being paid shall be cancelled, and for any deficiency in the proceeds of the bonds pledged by such association, when disposed of as hereinafter specified, to re-imburse to the United States the amount so expended in paying the circulating notes of such association, the United States shall have a first and paramount lien upon all the assets of such association, and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same."

Under this section the government could only claim priority over such assets as might be necessary over and above the bonds deposited to cover an excess of circulation. In other words, if the circula-
106 tion exceeded the bonds deposited, then, in that event and to that extent, a priority would be given, and the rule of distribu-

tion laid down in the 50th section enforced; but does this act modify or repeal the 5th section of the act of 1797? That section declares that "where any revenue officer or other person hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased, the debt due to the United States shall be first satisfied, and the priority hereby established shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent, shall be attached by process of law, as to cases in which an act of legal bankruptcy shall be committed." (Brightley's Digest, vol. 1, p. 17.)

As to a proper construction of this section, the master refers to
107 the case of United States vs. Fisher. (2d Cranch, p. 358, and also Harrison vs. Sterry, 5th Cranch, p. 289.)

If the 5th section is to be applied to this case, then the government would be entitled to a priority, so far as the deposits made by the internal revenue tax collector, including post office draft, are concerned, which amounts to the sum of $230,136 44. As to the priority claimed for the proceeds of the sale of the British vessel, deposited in the bank by order of the court, a different question is presented. It seems that all of the claimants applied to the receiver of the bank and obtained certificates of indebtedness in the same manner as other creditors did. The question then arises, whether the government can, under such circumstances, present these claims and demand a priority for them? Did not the acceptance of the certificates release the government from all liability, and place them on a footing with the general creditors of the bank?

108 Since this case was placed in the hands of the master, a paper filed in the circuit court on the 22d instant has been submitted to him. It will be seen by inspection that Hon. W. W. Howe, as counsel for certain parties in suit No. 5070, Bushnell vs. McKee et al., where certain moneys were deposited by the clerk of the court in the First National Bank over which he claims priority in the sum of 17,326 93.

By consent of the counsel in this case, the paper is to be received as evidence. It is herewith transmitted, marked "A."

It may be proper to remark that the master is advised that there are a number of other judgment creditors who claim priority on account of money deposited in this bank under order of court, but as they are not before him he cannot pass on them.

Respectfully submitted.

(Signed) JNO. B. WELLER,
Master in Chancery.

109 *Rule.—Extract from the minutes of Thursday, June 3d, 1869.*

TERRILL & CO. ET AL. vs. C. CASE, RECEIVER. } No. 5553.

On motion of H. B. Kelly, solicitor for the complainants, ordered, that the parties interested herein show cause on the 5th instant, at 11 a. m., why the master's report should not be approved and homologated.

Marshal's return.

Received June 4th, 1869, by the U. S. marshal, and on same day of June, 1869, served copy of within rule on U. S. attorney named herein, personally, at office in custom-house building in this city, and on same day served copy of same on J. D. Rouse, named herein, by leaving same on desk at office, 34 Natchez street, in this city.

New Orleans, June 5th, 1869.

(Signed) J. W. SAWYER,
D'y U. S. Marshal.

110 *Motion for confirmation of master's report and final decree.—Filed June 3d, 1869.*

In the circuit court of the United States for the 5th circuit and district of Louisiana.—In chancery.

TERRILL & CO., BAUER ET AL. CREDITORS OF the First National Bank,
vs.
CHAS. CASE, RECEIVER, ET AL. } No. 5553.

It appearing from the master's report that at the date of his check in favor of T. P. May and Co., and of his overdrafts in favor of the New Orleans and Carrolton rail road partnership, he had no funds in said First National Bank, and that he so as at the time and from thence hitherto has been a large debtor to said bank upon liquidated debts as appears in said report; and it further appearing on the report that upon all the facts there ought to be a decree for plaintiffs, but the master has referred the question of the priorities of the United
111 States to the court, the plaintiffs move for a confirmation of the report and a final decree conformably to the draft herewith submitted.

(Signed) HENRY B. KELLY, *Solicitor.*

Exception to master's report.—Filed June 5th, 1869.

U. S. circuit court 5th circuit, district of Louisiana.—In chancery.

TERRILL ET AL.
vs.
C. CASE, RECEIVER &c., HURLBURD, COMPTROLLER, &c., et al. } No. 5553.

Comes now the said Charles Case, as receiver of said First National Bank of New Orleans, and in behalf of himself as such receiver, and the said Hurlburd, as Comptroller, excepts to the report of Hon. Jno. B. Weller, master commissioner in chancery, in this cause filed, for the following reasons, to wit:

112 1st. Said report errs in crediting said May with $80,000 currency and $14,030 82 gold, as being the funds of said T. P. May, on the 13th May, 1867, said currency and gold being then and there the funds of said bank.

2d. The said report errs in its statement of the liabilities of said May, due or past due on the 13th May, 1867, to said bank.

3d. The account between the United States and the said bank is incorrectly stated in said report in charging the United States with the

sum of $112,002 29, as assumed by the government of United States in sale of Carrolton railroad to Bonneval et al., also in charging the United States with the gross sum collected by said receiver.

4th. The order of this honorable court did not direct the statement of any account between the United States and said bank.

5th. Said report is otherwise incorrect.

Wherefore he prays that said report be not confirmed.

113 *Order of continuance.—Extract from the minutes of Saturday, June 5th*, 1869.

TERRILL & CO. ET AL. *vs.* C. CASE, RECEIVER. } No. 5553.

The rule taken by the complainant on instant, came up—H. B. Kelly for complainant, J. D. Rouse for defendant—when, after hearing the defendants' objections, ordered, that the rule be continued till the 7th instant, at 11 a. m.

Final judgment.—From judgment docket.

United States circuit court, fifth circuit and district of Louisiana.—April term, 1869.

NEW ORLEANS, *Wednesday, June 30th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

TERRILL & CO. ET AL., CREDITORS OF THE 1ST National Bank of New Orleans, *vs.* CHARLES CASE, RECEIVER, ET AL. } No. 5553.

114 This cause came on to be heard upon the bill, answer, exhibits, orders, proofs, master's report, for a final order. And thereupon it is decreed by the court that the assets of the First National Bank of New Orleans in the hands of the Comptroller of the Currency be divided among all the creditors, who shall have proved their claims as the law directs, ratably, after deducting the expenses of the trust, and providing from the bonds on deposit with the Treasury Department for the redemption of the bills of said bank, and the deposits made in said bank under orders from the Treasury Department or otherwise of monies which were at the date of the suspension of said bank the actual funds of the United States; and that the United States should account to the creditors for the money received on account of the check of J. P. May for three hundred and fifteen thousand seven hundred and seventy-nine $\frac{11}{100}$ dollars, ($315,779 11,) amounting to ninety-four thou-

115 sand and thirty dollars and eighty-two cents, ($94,030 82,) and the further sum of one hundred and twelve thousand and nine dollars and nine cents, ($112,009 09,) assumed as due to the said bank by the United States in their settlement with said May, which sums amount to two hundred and six thousand and thirty-nine dollars and ninety-one cents, and that the check of May is not a valid claim against the bank. It is further ordered and decreed that no claim of the United States is to be taken or held as having a priority upon the assets of the bank aforesaid

except as before mentioned. It is further decreed that the costs of the suit be paid from the funds of the bank in the hands of the receiver.

Judgment rendered June 30th, 1869. Judgment signed July 5th, 1869.

(Signed) E. H. DURELL, *Judge.*

116 *Order.—Extract from the minutes of Wednesday, June 30th, 1869.*

TERRILL & CO. ET AL., CREDITORS OF 1ST National Bank, *vs.* C. CASE, RECEIVER. } No. 5553.

By consent of counsel, it is ordered that a fee of $500 be taxed to Master John B. Weller for his services in this case.

Petition of appeal and order thereon.—Filed July 6th, 1869.

United States circuit court, 5th circuit and district of Louisiana.

TERRELL & CO., BAUER ET AL., CREDITORS OF 1st National Bank, *vs.* C. CASE, RECEIVER, H. R. HURLBURD, COMPTROLLER, &c. } No. 5553.

The petition of the United States, parties in interest in the above-entitled cause, that a final decree was therein rendered on the 5th day of July, 1869, by which they are aggrieved, and are advised
117 that there is error therein to their prejudice. Wherefore they pray that a suspensive appeal be allowed them therefrom returnable to the next term of the Supreme Court of the United States.

(Signed) P. H. MORGAN, *U. S. Attorney.*

Order.

Let a suspensive appeal be allowed as prayed for.

(Signed) E. H. DURELL, *Judge.*

118 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 117 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Terrell & Co., Bauer and others, creditors 1st National Bank of New Orleans, vs. Hon. C. Case, receiver, & H. R. Hurlburd, Comptroller, &c., No. 5553 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 18th day of September, A. D. 1869.

[SEAL] D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do

hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 18th day of September, A. D. 1869.

E. H. DURELL, *Judge.*

[Five-cent. internal revenue stamp affixed and canceled.]

119 THE UNITED STATES OF AMERICA, *District of Louisiana:*

The President of the United States to A. Terrell & Co., F. Bauer, & others, creditors of the First National Bank of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, to answer the appeal taken by the United States, parties in interest in this cause, through H. R. Hulburd, Comptroller of the Currency, & that you show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

120 (Indorsed:) United States circuit court. No. 5553. Terrell & Co., Bauer, & others, creditors 1st National Bank of New Orleans, vs. Hon. C. Case, receiver, & H. R. Hurlburd, Comptroller, &c. Citation of appeal.

Marshal's return.

Served on H. B. Kelly, the att'y, on July 8th, 1869, on banquet, 99 Canal street, N. O.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover): No. 299. C. Case, receiver, and H. R. Hulburd, Comptroller of the Curency U. S., appellants, vs. A. Terrell & Co. F. Bauer, et al., creditors of the 1st National Bank of New Orleans. Louisiana C. C. U. S.

Filed 1st December, 1869.

REC. 299—4.

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 105.

C. CASE, RECEIVER, AND H. R. HULBURD, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, APPELLANTS,

vs.

A. TERRELL & CO., F. BAUER, ET AL., CREDITORS OF THE FIRST NATIONAL BANK OF NEW ORLEANS.

FILED NOVEMBER 7, 1870.

1 CASE, RECEIVER, *vs.* TERRELL & Co. } No. 105.

It appearing to the court that a certain document, marked "C," and now produced, was used in the trial of the cause in the court below, and has been omitted in the transcript sent up to this court, it is, on motion of B. Phillips, sol'or for appellees, and with consent of the Solicitor General of the United States, ordered that the said Exhibit "C" be filed as part of the said transcript, and printed as part of the record.

Washington, 7 Dec'm., 1870.

2 (Indorsed:) Supreme Court U. S. 1870, Dec. term. 105. Case, receiver, & al., vs. Terrell & Co. Agreement of counsel filed in open court. Filed 7 December, 1870.

3 In the circuit court of the United States, fifth circuit and district of Louisiana, in chancery.

TERRELL & Co., BAUER & AL., CREDITORS First National Bank of New Orleans, *vs.* HON. C. CASE, RECEIVER, & H. R. HULBURD, Comptroller. } No. 5553.

Document "C," offered by plaintiffs, and filed March 29th, 1869, not included in the original transcript of appeal in this case, being the document referred to at page 96 of the written transcript as lost or mislaid.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans:

Be it known that on this twenty-first day of the month of August, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-second, before me, Gustave Le Gardeur, jr., a notary public, duly commissioned and sworn in and for the parish and city aforesaid, therein re-
4 siding, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William Bell, of the city of Washington, District of Columbia, herein acting as the duly appointed and qualified special agent of the United States of America, by virtue of the credentials exhibited to me, notary;

Which said appearer declared in his said capacity that for the consideration, and upon the terms and conditions hereinafter expressed, he does by these presents sell, transfer, assign, and set over, with full warranty unto Messrs. Alexander Bonneval, Joseph Hernandez, and George Binder, all of this city—they being here also present, accepting & purchasing in the proportion of one undivided third part each—for themselves, their heirs, and assigns, all and singular the rights, titles, interest, share, claims, & demands of every nature and kind whatever of the said United States of America in and to—

1st. The lease of the New Orleans and Carrollton Railroad and other franchises thereof, & the railroad tracks, rolling stock, engines, cars, live-stock, and other appurtenances thereunto belonging or in any wise appertaining.

2d. The copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutant Beauregard for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six, by which said act of copartnership the said parties thereto became interested in the proportion of one-third part and interest each in the lease and other franchises of said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and which said lease was obtained by the said G. T. Beauregard, for the joint account of himself and the said May & Graham, as per act of lease in the premises passed before S. Magner, a notary in this city, on the twelfth day of April, one thousand eight hundred and sixty-six.

3d. And the real estate hereinafter described, to wit:

I. A certain square of ground, with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city. The said square comprised between Nayades, Apollo, Milan, and Berlin streets, & containing twenty-four lots, numbered from one to twenty-four inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city.

III. A certain piece or portion of ground situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle bounded by Levee street, Carrollton avenue, & First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches & *and* one a half lines front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

IV. Seven certain lots of ground situate in the first district of this city, in the square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in the city, as plan No. one hundred and sixteen, according to which plan said lots measure as follows, to wit:

Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines.

Lots two, three, four, and five, immediately in rear of said lot No. one, adjoin each other, & measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Apollo, now Carondelet, street, and about one hundred and twenty-seven feet nine inches in the rear.

And lots six and seven, adjoining each other, and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet, eleven inches, and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines. Together with all and singular the buildings and improvements thereon, and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining.

Which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show, by four different purchases, to wit:

One from S. A. Kohn, by act passed before A. Ducatel, a notary in this city, on the thirtieth day of April, one thousand eight hundred and sixty-six. Another from W'm C. Raymond, by act passed before the same notary on the fifth day of May, one thousand eight hundred
9 and sixty-six. The third, from the New Orleans and Carrollton Railroad Company, by act passed before S. Magner, a notary in this city, on the twenty-ninth of June, one thousand eight hundred and sixty-six; and the fourth and last from the same company, by act passed before the same notary on the fifteenth day of January, one thousand eight hundred and sixty-seven:

To have and to hold the herein above-conveyed right, title, interest, share, & demand of the United States in & to the above-described property unto the said Alexander Bonneval, Joseph Hernandez, and George Binder, their heirs and assigns forever.

The United States are the owners of the herein above-conveyed right, title, & interest, share, and demand in and to the above-described property, which right, title, interest, share, and demand embrace, cover, and amount to two-thirds of the whole, for having acquired the same from Thomas P. May and Augustus C. Graham by act passed before Andrew Hero, jr., a notary in this city, on the sixteenth day of May, one thousand eight hundred & sixty-seven.

10 This sale is made and accepted for and in consideration of the price and sum of two hundred & eighty-eight thousand dollars for the two-thirds part or interest herein transferred in the above-described property, payable as follows, to wit: One hundred thousand dollars cash, one hundred thousand dollars in three months, and eighty-eight thousand dollars in six months from the twentieth instant, when this contract was closed between the parties.

Wherefore the said Alexandre Bonneval, Joseph Hernandez, and George Binder have presently, and at the sight of the notary and witnesses undersigned, paid cash, in United States currency, the sum of one hundred thousand dollars to the said William Bell, who, in his aforesaid capacity, acknowledged the receipt thereof, & grants full and ample acquittance for the same.

And for the balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said purchasers have furnished two several promissory notes, dated the twentieth instant, made & subscribed by them to the order of, and endorsed by, Messrs. F. H. Ducros, L. E. Lemarie, & John Dolhonde, & made payable at the office of the Assistant Treasurer of the United States in this city: one for the sum of one hundred thousand dollars at three months, and the other for the sum of
11 eighty-eight thousand dollars at six months after date, which said notes, after being signed "Ne varietur" by the undersigned notary, to identify them herewith, were handed over and delivered to the said William Bell, who, in his said capacity, acknowledged the receipt thereof.

It is well understood that, to secure the payment of the said two notes, the United States expressly retain the vendor's privilege as granted by the laws of Louisiana.

It is also well understood, covenanted, and agreed that all the liabilities due and owing by the said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are, hereby assumed by the purchasers.

It is further understood, covenanted, and agreed that the United States shall and will, at all times, protect the purchasers against and save them harmless from any claim which might at any time be set up against them personally, or against the aforesaid copartnership, on the property, rights, & effects thereof, by or in the name and for the use of The First National Bank of New Orleans, or assigns, for the recovery of, or in reference to, an overdraft of seventy-two thousand
12 & nine dollars & nine cents, & a promissory note for forty thousand dollars, in all one hundred and twelve thousand & nine dollars and nine cents, which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans & Carrollton Railroad, but which, in truth and reality are, inclusively, due & owing to said bank by the said Thomas P. May. And for the better protection of said purchasers the Government, through its agent aforesaid, agrees to, and does hereby, assume the payment of said indebtedness of one hundred and twelve thousand & nine dollars & nine cents to the said First National Bank of New Orleans.

And whereas a certain document, purporting to be a transfer of rights by Augustus C. Graham to The Fourth National Bank of New York, was signed, sealed, and delivered by the said A. C. Graham on the eighth day of May, one thousand eight hundred and sixty-seven, and subsequently, to wit, on the fifteenth day of May, one thousand eight hundred and sixty-seven, was registered in Book II, folio 812, of the office of conveyances in and for the parish of Jefferson, in this State: Now, therefore, and although the parties hereto refuse to acknowledge, but on the contrary strenuously deny and contest the legality, valid-
13 ity, and effect of said document, yet it is expressly agreed by and between said parties that the Government of the United States shall and will at all times warrant and protect the purchasers herein against the said document and the effects thereof; and for the better protection & safety of the purchasers, it is further covenanted and agreed that the note for eighty-eight thousand dollars herein above furnished shall not be disposed of, nor payment thereof demanded, until the aforesaid document and the registration thereof in the conveyance office shall have been annulled, set aside, and cancelled; and in furtherance of this agreement the said note of eighty-eight thousand dollars was handed over to the notary undersigned, who endorsed thereon the said agreement, & & immediately returned the said note to the said William Bell.

And to these presents personally came and intervened Stephen Richard Proctor, esq're, of this city, and herein acting in behalf and as the duly authorized agent of G. T. Beauregard, esq're, by virtue of an act of procuration passed before A. Ducatel, a notary in this city, on the sixth day of August, one thousand eight hundred and sixty-seven, which said appearer declared that he does, by these presents, accept notice of the foregoing transfer in the name and as agent aforesaid.

14 And also to these presents personally came and intervened Samuel H. Torey, esq., of this city, who declared that, as attorney for the United States for the district of Louisiana, he has examined

the present act and approves it; and the said district attorney further certifies that he has examined the instructions given to the said William Bell; that by these instructions he is fully authorized to enter into & execute the present contract, and that said contract has been approved by Governor Flanders and Mr. John S. Walton, assistant treasurer of the United States in this city.

The United States being the sellers, the internal revenue stamps are not required.

Thus done and passed at New Orleans, in my office, on the day, month, and year aforesaid, in the presence of Messrs. Gustave Le Gardeur, sen'r, & Armand Pitot, junior, competent witnesses, who have signed with the parties & me, notary, after reading the whole.

Original signed:

W'M BELL,
Special Agent.
ALEX. BONNEVAL.
J. HERNANDEZ.
G. W. BINDER.
G. T. BEAUREGARD,
P'r pro. S. RICH'D PROCTOR.
SAM. H. TORREY,
U. S. Att'y.
G. LE GARDEUR.
A. PITOT, JR.
G. LE GARDEUR, JR.,
Not. Pub.

Debts and bills payable referred to.

15	4 notes for $4,333 33 each, given for the horse station stable, and payable 20th Dec'r, 1867, and 20 Dec'r, 1868, with 8% interest		$19,413 31
1	note for $4,166 66, given for the square corner of Napoleon and St. Charles streets, and payable 8th May, 1868, with 8% interest		4,833 32
6	notes given to Dr. Elliott for 102 mules, payable at different dates within eight months, with interest		23,340 90
	Amount due the Carrollton R'lroad Company for old rolling stock sold by the lessees and to be accounted for by them,		10,000 00
2	notes of $8,666 66 each, given for the hotel at Carrollton, and payable 2d June, 1867, and 2d June, 1868, with interest amounting to	$19,413 32	
1	note, $2,666 66, given for square of ground near Napoleon avenue, & payable 2d of May, 1868, with interest	" 3,091 10	
			22,504 42
	Pay-rolls for month of July		10,521 17
	Office rent for July, $125; railroad rent last half of July, 854 16		979 16
	U. S. tax on July receipts, $490 57; P. Mackenrig, $40		530 57
	Stevens & Seymour, $20; Slark, Stauffer & Co., $94 25		114 35
	Hall, Young & Co., $66 92; McDuff & Co., $4,119 10; Hill & Veazie, $24 40		4,210 42
	To be forwarded		96,447 62

16	Forwarded	$96,447 62
	Geddes & Shakespere, $11 69; Kearny, Blois & Co., $56; H. Perry, 2 00	69 69
	Horter, Peterson & Fenner, $24 05; G. N. Morison, $92 98; F. Fischer, 156 77	273 80
	N. O. & C. R. R. Co., $414 85; Jno. Rooney, $1,000; J. C. Davey, $1,324 90	2,739 75
	Taylor & Co., $1,599 55; Bridge & Son, $45; Page & Co., $362 37	2,006 92
	J. B. Slawson, $1,400; Jno. Stephenson, $805; I. R. Yorck, $100 00	2,305 00
	Dr. Jos. Elliott, mules	9,000 00
	Amount received for old rolling stock sold since last statement of liabilities furnished, and increasing the amount received for rolling stock sold to $20,009 80	10,009 80
		$122,852 58
	Amount required to complete the road, estimated	40,000 00
		$162,852 58

I certify that the above statement is correct.
(Signed) S. RICH'D PROCTOR, *Treas'r.*
P. McBRIDE, *Book-keeper.*

A true copy.
New Orleans, this seventeenth day of March, A. D. 1869.
[SEAL.] G. LE GARDEUR, JR.,
Not. Pub.

[5-cent. int. rev. stamp, cancelled.]

17 (Endorsed:) Copy. August 21st, 1867. Transfer by the United States to Alexander Bonneval, Joseph Hernandez, and George Binder. U. S. circuit court, 5553 "C." Offered by pl'ffs & filed M'ch 29, '69. F. B. Vinot, d'y cl'k.

18 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 15 pages contain and form a full, complete, true, and perfect transcript of the document C, filed in evidence March 29th, 1869, in the case of Terrell & Co., Bauer, et al., creditors 1st National Bank of New Orleans, vs. Hon. C. Case, receiver, & H. R. Hulburd, Comptroller, No. 5553 of the docket, as the same now remains of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18 day of August, A. D. 1870.
[SEAL.] D. URBAN, *Clerk.*

[5-cent int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do

hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18th day of August, A. D. 1870.

E. H. DURELL, *Judge.*

[5-cent int. rev. stamp, canceled.]

(Indorsed:) Supreme Court U. S. 1869, Dec. term. No. 105. Case, receiver, & al., vs. Terrell & Co. Copy of document C. Filed 9 September, 1870.

O

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

CHARLES CASE, *Receiver*, and HILAND R. HULBURD, *Comptroller of the Currency*, *Appellants*,
vs.
A. TERRILL, *et al.*

No. 105.

Appeal from the Circuit Court of the United States for the District of Louisiana, in Equity.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

CHARLES CASE, *Receiver*, and HILAND R. HULBURD, *Comptroller of the Currency*, *Appellants*,
vs.
A. TERRILL, *et al.*
No. 105.

Appeal from the Circuit Court of the United States for the District of Louisiana, in Equity.

STATEMENT.

This is an appeal from the United States circuit court for the district of Louisiana, on a bill filed by creditors of the First National Bank of New Orleans, against Case, receiver of the bank, Hulburd, Comptroller of the Currency of the United States, Thomas P. May, and G. T. Beauregard, to define the claim of the United States as creditors of the bank under assignment from May, and as depositors. The facts material to the questions of law raised by the appeal are briefly as follows:

Before the 12th of May, 1867, Thomas P. May had been Assistant Treasurer of the United States, and was a defaulter in the said office to a very large amount. He had also been President of the First National

Bank of New Orleans, but had ceased to be so in the preceding month. On Sunday, the 12th of May, the bank was taken possession of by Knox and Maline, as agents for the Treasury Department of the United States, appointed to investigate its affairs, having up to that time transacted business as usual. There was then on the books of the bank an apparent balance standing to the credit of May of $315,779 11, and on the 13th, May drew a check, payable to T. P. May & Co., and endorsed by them, for that amount of money, and handed it over to the Treasury agents. This check was marked "good" by the teller, with the knowledge, and as this appellant contends, with the approval of the president of the bank, and a payment was made upon it of $94,030 82, and the check was protested for non-payment of the residue. The next day, the bank, by direction of the Treasury agents, stopped payment on its circulation and went into liquidation, Case being appointed receiver. At this time May was hopelessly insolvent, and unable to pay the demands of the Government against him, and on the 17th of May he made an assignment to the Government, before a notary public, of property nominally to the amount of $1,196,779, including the following items: Cash in the National Bank, $315,779; the interest of the said May in and to the Carrollton Railroad, $480,000.

At this time May, Beauregard, and A. C. Graham, constituted a partnership, who held a lease of the New Orleans and Carrolton Railroad Company, and kept an

account in the bank in the name of "G. T. Beauregard, lessee," and which account, on the 13th of May, owed the bank $237,008 39. May's name was also upon several notes at the bank, most of which had not then fallen due. In October, 1867, the Government sold all its rights under May's assignment in the New Orleans and Carrolton Railroad to Bonneval and others, and then assumed the payment of $112,009 09, due from the lessees of the road to the First National Bank.

On the 29th of July, 1864, the sum of $124,649 57 was deposited in the bank, by order of the district court, being the proceeds of the sale of the brig Volante and cargo, libelled in admiralty as forfeited to the Government, and sold by order of the court, pending litigation. On this there was a balance in the bank of $116,389 at the time of its suspension. This case was subsequently decided in favor of the claimants, and, on the 4th of June, the court decree [illegible] aforesaid of proceeds should be [illegible] demand was made by them f[illegible]

The court decreed that "[illegible] tional Bank of New Orleans, [illegible] troller of the Currency, be divided among all the creditors who shall have proved their claims as the law directs, ratably, after deducting the expenses of the trust, and providing from the bonds in deposit with the Treasury Department for the redemption of the bills of said bank, and the deposits made in said bank under orders from the Treasury Department or otherwise of

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The court decreed that "the assets of the First National Bank of New Orleans, in the hands of the Comptroller of the Currency, be divided among all the creditors who shall have proved their claims as the law directs, ratably, after deducting the expenses of the trust, and providing from the bonds in deposit with the Treasury Department for the redemption of the bills of said bank, and the deposits made in said bank under orders from the Treasury Department or otherwise of

moneys which were, at the date of the suspension of said bank, the actual funds of the United States; and that the United States should account to the creditors for the money received on account of the check of J. P. May for three hundred and fifteen thousand seven hundred and seventy-nine dollars and eleven cents, ($315,779 11,) amounting to ninety-four thousand and thirty dollars and eighty-two cents, ($94,030 82,) and the further sum of one hundred and twelve thousand and nine dollars and nine cents, ($112,009 09,) assumed as due to the said bank by the United States in their settlement with said May, which sums amount to two hundred and six thousand and thirty-nine dollars and ninety-one cents, and that the check of May is not a valid claim against the bank. It is further ordered and decreed that no claim of the United States is to be taken or held as having a priority upon the assets of the bank aforesaid except as before-mentioned."

ARGUMENT.

I.

The appellant submits that the circuit court had no jurisdiction of this suit.

Section 57 of the currency act (13 U. S. Stats., 116) is in these words:

"That suits, actions, and proceedings *against* any association, under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any State, county, or municipal court

in the county or city in which said association is located having jurisdiction in similar cases: *Provided, however*, That all proceedings to enjoin the Comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located."

Section 50 of the same act, having authorized the Comptroller of the Currency to appoint a receiver to close the affairs of a defaulting banking association, and prescribed his duties, closes with the following proviso:

"*Provided, however*, That if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

This is the only proceeding to enjoin the Comptroller authorized by the act, and is manifestly the proceeding referred to in the proviso to section 57. The obvious purpose of this latter proviso is, to confine the jurisdiction given by the proviso to the 50th section to a circuit, district, or territorial court of the United States

held in the district in which the association is located. By the proviso to the 50th section, the jurisdiction is given to the *nearest* circuit, or district, or territorial court of the United States, and the effect of the proviso to the 57th section is to require such proceedings to be had in the district in which the association is located.

The bill describes the complainants and respondents as citizens of the same State, and there is nothing in the answer of the receiver or the Comptroller at variance with this statement. Although the United States is not made a party by name, the only practical relief sought in the bill is against the Government.

The act of Congress in question has conferred upon the courts of the United States no such jurisdiction. Neither the Comptroller nor the receiver was authorized, by entering his own appearance, or that of the United States, to give to the circuit court jurisdiction of the questions presented in this bill. The body of the 50th section of the act, which authorizes the Comptroller to appoint a receiver, and direct such receiver to take possession of the books, records, and assets, of a defaulting association, and to collect all debts, dues, and claims belonging to such association, and which also authorizes him, upon the order of a *court of record of competent jurisdiction*, to sell or compound any bad or doubtful debts, or on a like order to sell all real and personal property of such association on such terms as the court shall direct, confers no jurisdiction upon any court of the United States, or of any State, but leaves

the receiver to invoke the action of any court already having competent jurisdiction.

The circuit court of the United States for the district of Louisiana having no jurisdiction of this case, it results that the case must be reversed, and remanded with directions to dismiss.

Hornthall *vs.* The Collector, 9 Wallace, 560.

Insurance Company *vs.* Ritchie, 5 Wallace, 541.

II.

On the 11th of May, 1867, Thomas P. May was a defaulter in his account as Assistant Treasurer of the United States, and so hopelessly insolvent that it was impossible for him to pay the claims which the Government had upon him, and in respect of which it was undoubtedly entitled to priority of payment under the statute of March 3, 1797, § 5, (1 U. S. Stats. at Large, 515.) The action of the agents of the Government in procuring from him the assignment which they did of his property in the bank, and in the lease of the New Orleans and Carrolton Railroad, was, undoubtedly, perfectly legal, and in no way interfered with the rights of his creditors. They, therefore, can make no complaint of this transaction.

1. The first question, then, upon the merits, is what were the rights, if any, which accrued to the Government from the check drawn by him upon the bank on Monday, the 13th of May, and which was marked "good," and in part paid.

Up to the Saturday before, the bank, whatever its internal condition may have been, was transacting business as usual, and its officers seem to have been wholly unprepared for the subsequent action of the agents of the Treasury. That action, at first, although somewhat obscurely stated in the record, would seem to have been nothing more than taking possession of the bank for the purpose of examining its condition.

By the bank act of June 3, 1864, section 54, (13 U. S. Stat. at Large, 116,) it is provided:

"That the Comptroller of the Currency, with the approbation of the Secretary of the Treasury, as often as shall be deemed necessary or proper, shall appoint a suitable person or persons to make an examination of the affairs of every banking association, * * * * * and who shall have power to make a thorough examination into the affairs of the association, and, in doing so, to examine any of the officers and agents thereof on oath; and shall make a full and detailed report of the condition of the association to the Comptroller."

By section 47 of that act, (*ib.*, 114,) it is enacted that, on receiving notice that any banking association has failed to redeem any of its circulating notes, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, who shall immediately proceed to ascertain whether such association has refused to pay its circulating notes in lawful money of the United States, when demanded as aforesaid, and report to the Comptroller of the Currency the fact so ascertained. By section 50, upon being convinced that the bank has refused to redeem its

circulating notes the Comptroller may appoint a recceiver to take possession of the bank.

Until Tuesday, May 14, the agents of the Treasury Department would seem to have been acting under section 54 of the above statute, and not under section 50. There is nothing in the case which shows any legal suspension or deprivation of the powers of the officers of the bank, at any rate, before that day. The bank was undoubtedly in the posession of the Treasury agent, but *non constat*, as regards people dealing with it, that, after an examination of its affairs and condition, it might not go on with business as before. In this state of its affairs, a check drawn by May, in favor of T. P. May & Co., but the amount of which was left blank, was brought to the bank under the following circumstances, as stated by Forbes, its president:

"On Monday morning, I think it was, and between the hours of 10 and 12 in the forenoon, I was standing on the door-steps of the bank with the receiving teller of the bank, Mr. E. S. Leeds, when Dr. M. T. Steele handed me Mr. May's check on the bank, signed in blank, to be filled up to the amount, as then appeared, to the credit of Mr. May on the books of the bank. I handed the check to Mr. Leeds, who thereupon referred to the books of the bank, and filled up said check to the amount of three hundred and fifteen thousand seven hundred and seventy-nine dollars and eleven cents. In regard to this amount I know nothing of my own knowledge, but was informed by Mr. Leeds that that amount stood to the credit of Mr. May on the books of the bank. He also informed me that he had certified this check.

"The cashier was not consulted about it; it was all done between Mr. Leeds and myself.

"All I know of the condition of Mr. May on the 13th of May, 1867, is as certified by Mr. Leeds. I suppose he had that amount, as the books showed it to be due him. As for what sum he owed the bank, I am unable to say without referring to the books of the bank." (Record, p. 18.)

It is contended that, upon this evidence, the conclusion is inevitable that this check was filled up for the amount then nominally due to May upon the books of the bank and marked "good," in perfect good faith, by Leeds, the teller, with the knowledge and approval, if not by the direction, of the president; and, under ordinary circumstances, that it would, without question, bind the bank.

Merchants' National Bank *vs.* State National Bank, decided at present term.

Undoubtedly, if this had been either fraudulently or collusively done, it would be held void; but there is no evidence whatsoever that either the officers of the Government or the officers of the bank, up to this time, did not act in entire good faith, and without any knowledge of there being debts due the bank from May which offset the amount nominally due from the bank to him; and neither they nor the Government can be affected by any guilty knowledge of May, or by any previous or existing fraudulent intention on his part.

It is submitted that the fact that the Treasury agents were in possession of the bank does not, under the cir-

cumstances, affect the rights of the parties. The action of the president and teller seems to have been perfectly honest; nor does there seem to have been any question made of their good faith; nor does it appear that they had any reason to suppose that they had been suspended from their respective offices. Their action, in certifying this check as "good," would indicate that, in their judgment, the condition of the bank was not so hopeless as to render it improper for them to make transfers of money on deposit in it.

This check, although payable to T. P. May & Co., was, undoubtedly, from the evidence in this case, given by May to the agents of the Government in part settlement of the claims of the Government upon him, and the Government stands in the position of a *bona fide* holder thereof for value.

2. There is nothing, therefore, in the circumstances of this case to take it out of the ordinary rule making the bank liable for the action of the president and teller in certifying this check as good. If so, then this check was a debt due from the bank to the Government. Upon this check, the same day, the teller paid $94,000, then on deposit in the bank. From the master's report (Record, p. 30) it appears that this $94,000 was money actually deposited by May; and the purpose of this transaction would seem to have been not to give the holder of this check undue preference over other creditors, but simply to transfer to them upon it the amount actually then on deposit by May in the bank.

3. If the position of the appellant above be correct, there would seem to be no reason why the Government must be regarded as holding this sum of $315,000 subject to any equities with which it might be burdened in the hands of the assignor. There is no proof which will justify the court in assuming that the Government took it with knowledge, either actual or constructive, of such equities; and if the check operated as an assignment of the amount nominally due to May—and if the bank, by the action of its officers, is estopped to deny that there was then due and owing him the sum for which the check was drawn—there would seem to be no principle of law or equity which would compel the Government to deduct any debt or liability of May to the bank.

4. But if the Government can stand in no better position, in respect of this $315,000, than May himself, it by no means follows that the payment upon the check of $94,000 was fraudulent, either actually or constructively. But it is contended that it was a payment made in entire good faith, and without notice of the existence of any debt to offset the sum to the credit of May at the bank. Under these circumstances, it is undoubtedly still a case of a creditor who has in his possession property of a bankrupt in good faith, and which he is not obliged to pay over until he has satisfied his own claim upon the bankrupt therefrom. Nor would it seem to be inequitable that the Government should be allowed to retain this money, unless it can be

fairly shown that its agents acted in bad faith in obtaining it, and of which this appellant denies that there is any evidence.

5. It is not denied that, in settling their account with the bank, the United States ought to deduct the $112,000 assumed by them when they sold May's interest in the railroad in the succeeding October.

III.

The next question is, whether the Government is entitled to any priority of payment over other creditors, and upon what principle its account with the bank shall be settled?

The bank had deposited with the Comptroller of the Currency $200,000, in bonds, to secure its circulation. By section 47 of the banking act (13 Stats. at Large, 114) these bonds were forfeited by the refusal of the bank to pay its circulating notes, and whether there was anything remaining or not, after the redemption of the currency by the Government from these bonds, is immaterial.

By section 45 of the banking act (*ib.*, 113) it is enacted that banking associations, when designated by the Secretary of the Treasury, "shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary;" "and the Secretary of the Treasury shall require of the association thus designated satisfactory security, by the deposit of United States bonds and

otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government."

Under this section, this bank had been designated a depository of public money, and had deposited $250,000 in Government bonds as security therefor. The master found that the amount entitled to priority of payment, under this statute, out of these bonds, was $230,136 44, besides the amount unpaid on May's check, and the proceeds of the sale of the brig Volante, and there is no question made as to the first sum above claimed. As to the amount deposited by the clerk of the district court, as the proceeds of the sale of the brig, it is submitted that this was clearly public money within the meaning of those words, in the 45th section of the bank act. It was money deposited by a public officer in the performance of a public duty, and under order of court. There is no reason for construing the words "public money" to mean the same as debts due the Government, and to which priority is given by the act of 1797. It is just as important that there should be a place where property of this kind can be deposited in safety as any of the moneys belonging to the Government directly, and, as the Government has an interest in the money, it has an interest in its safe-keeping. As, therefore, after the deduction of the amount found by the master to be entitled to priority of payment, there would still remain a balance from the proceeds of the bonds depos-

ited as security, it should be applied towards the payment of this money, without regard to the question as to whether the act of 1797 applies to national banks. The action of the claimants of this money in applying for its payment, does not seem to have injured the bank, and should not, therefore, affect either their rights or the rights of the Government in the matter.

But, under the statute of 1797, as construed by the highest authorities, there would seem to be no reason why the United States is not entitled to priority of payment of debts due to it from national banks, as well as from other individuals and corporations.

Beaston *vs.* The Farmers' Bank of Delaware, 12 Pet , 102.

1 Kent's Com., (6th ed.,) 243, 244.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.

otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government."

Under this section, this bank had been designated a depository of public money, and had deposited $250,000 in Government bonds as security therefor. The master found that the amount entitled to priority of payment, under this statute, out of these bonds, was $230,136 44, besides the amount unpaid on May's check, and the proceeds of the sale of the brig Volante, and there is no question made as to the first sum above claimed. As to the amount deposited by the clerk of the district court, as the proceeds of the sale of the brig, it is submitted that this was clearly public money within the meaning of those words, in the 45th section of the bank act. It was money deposited by a public officer in the performance of a public duty, and under order of court. There is no reason for construing the words "public money" to mean the same as debts due the Government, and to which priority is given by the act of 1797. It is just as important that there should be a place where property of this kind can be deposited in safety as any of the moneys belonging to the Government directly, and, as the Government has an interest in the money, it has an interest in its safe-keeping. As, therefore, after the deduction of the amount found by the master to be entitled to priority of payment, there would still remain a balance from the proceeds of the bonds depos-

ited as security, it should be applied towards the payment of this money, without regard to the question as to whether the act of 1797 applies to national banks. The action of the claimants of this money in applying for its payment, does not seem to have injured the bank, and should not, therefore, affect either their rights or the rights of the Government in the matter.

But, under the statute of 1797, as construed by the highest authorities, there would seem to be no reason why the United States is not entitled to priority of payment of debts due to it from national banks, as well as from other individuals and corporations.

Beaston *vs.* The Farmers' Bank of Delaware, 12 Pet , 102.

1 Kent's Com., (6th ed.,) 243, 244.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.

2 Exhibits 295
2 Def. 102
1 Pltf
Oct 1864
John Answer Exhibit
to Cir Court

Supreme Court of United States.

No. 299.

A. TERRILL & CO., ET AL. FOR THEMSELVES AND ALL OTHER CREDITORS OF FIRST NATIONAL BANK OF NEW ORLEANS, APPELLEES.

VS.

CHARLES CASE, RECEIVER OF SAID BANK AND H. R. HULBURD, COMPTROLLER OF THE CURRENCY, APPELLANTS.

Appeal from the U. S. Circuit Court for the District of New Orleans.

VIEWS OF C. CASE, RECEIVER, AS TO CERTAIN CLAIMS OF THE U. S. GOVERNMENT AGAINST THE BANK.

Supreme Court of the United States,

On appeal from the U. S. Circuit Court for the District of Louisiana.

A. TERRILL, ET AL.

vs.

C. CASE, RECEIVER OF FIRST NATIONAL BANK OF NEW ORLEANS, and H. R. HULBURD, COMPTROLLER OF CURRENCY.

VIEWS OF THE RECEIVER.

In this case the Receiver has doubted the propriety of his discussing any of the questions presented for the adjudication of the appellate Court.

Legally his position would seem to be, to some extent, one of neutrality between the *real* contesting parties. The real contestants, though one is not an actual party to the record, are, The United States Government on the one hand, and all other creditors of the First National Bank of New Orleans (hereinafter named as "*this Bank*," or "*the Bank*") on the other.

Between these, the real litigants in this case, it matters not personally, or officially to the Receiver,

nor indeed to the Comptroller, which shall prevail, nor by what law or rule the assets of the Bank shall be divided. In fact, the Receiver has nothing to do with the distribution of the assets of the insolvent institution, except in the matter of the costs and expenses of the trust (see last clause of section 47 of the National Currency act, and section 50 of same act, 13th U. S. Statutes at Large, page 114).

The section last cited defines the Receiver's duties and powers. By its provisions he has only to pay over, as he must, all moneys collected, less of course costs and expenses, to the Treasurer of the United States, and he has no further responsibility for the funds.

It is also true of the Comptroller, that he only desires to be legally and certainly advised as to how he should pay, and whose acquittance will be his valid discharge and protection. Beyond this he and the Receiver are only anxious that the law shall be settled and that the decision shall be such, so far as the strict letter of the statutes will warrant, as will be consonant with impartial equity, the best interests of community and our National Banking system.

But the convictions of the Receiver as to what equity and these best interests demand, are so strong that he ventures, despite all doubts, to submit a few suggestions for the consideration of the court, at the risk, possibly, of being charged with having spoken, when he might, as a neutral, have remained silent.

During the three years (nearly) of his administration of the trust, he has had frequent occasion to consider the claims set up by the United States to priority and full payment of the check drawn and

indorsed by T. P. May, and for the full amount, or a large balance, of the proceeds of the sale of the *brig Volant and cargo,* and other claims, similar to that last named. The more he has reflected the stronger has become his conviction that not by law, much less on principles of equity, can either of these claims be allowed. Such was his opinion when this case was decided in the court below; and it is appealed because higher government officials seek a different ruling, or deem it at least important to have the judgment of the tribunal of last resort.

The arguments submitted by Judge Campbell and his associate, Mr. Kelley, on behalf of the appellees, seem to be sound. Referring now specially to the claim of the Government, based on the check of T. P. May, but little need be added to what they say as to the amount actually due to May from the Bank at the date of that check. That the nominal balance to his credit on the Bank books, for which amount the check was drawn, was too large by the amounts of one hundred and twenty-five thousand dollars (the face of his unstamped worthless Bill of Exchange on A. C. Graham, of New York,) and forty thousand dollars (the face of the so-called Beauregard note,) and seventy thousand and eighty dollars and eighty-nine cents, (the sum for which the account of "Beauregard, lessee," was overdrawn,) making a total of $237,008 89, is an incontrovertible fact. For each of these large items May was unquestionably liable, as the copartner of Beauregard, and probably for other large credits in the Beauregard account, and

they should have been deducted from his nominal balance before certifying any check.

It would seem equally clear that neither the President or Cashier of the Bank, much less a *Paying Teller*, could, after the actual suspension, by any paper, make an admission, contrary to these facts, which should be of any validity as against other creditors. The attempt to do so by drawing the check under consideration, and having it certified "good" by the Teller, was little better than an attempt to defraud all other creditors, in which, however, the agents of the Treasury Department are not at all implicated, inasmuch as they were then ignorant of the actual facts, and were merely endeavoring to do their duty, and to save the Government, so far as possible, from loss.

Furthermore, May's credit, so far as he had any balance to his credit, should have been held after this Bank stopped payment to settle his many and large liabilities as acceptor and indorser, then almost matured. These latter obligations would have very nearly liquidated the apparent balance to his credit, without reference to the large sums before named.

But conceding (for argument's sake only) the correctness of the check, why should the United States be paid thereon in full? The general proposition that the assignee of a *chose in action* stands in the shoes of the assignor is not to be controverted. Why shall not this rule apply to the Government, as the assignee of May? Surely the currency act attempts to prescribe one, and only one general rule for paying

Whether these agents had not constructive notice of the facts or a knowledge which should have put them on inquiry

all liabilities of an insolvent National Bank, save those expressly excepted, viz: *pro rata;* and as if to make this one general rule more apparent, the exceptions are as clearly and specifically defined as they can be in words. These are:

First—The liability for the circulation of the bank (see sections 47 and 50 before cited). As to this the priority which the United States might otherwise, perhaps, attempt to insist upon by virtue of section 5, chapter 20, First Statutes at Large, page 515, is undoubtedly postponed by said section 47, which makes the liability for the circulation, so far as not liquidated by the bonds deposited, a "first and paramount lien upon all the assets of the association, *in preference to any and all other claims whatsoever, except costs and expenses.*"

Second—United States deposits, strictly so called, are unquestionably preferred by section 45 (Thirteenth Statutes at Large, page 113), to the extent of the bonds pledged for their repayment; and, as has well been said, Government must resort to these securities in the first instance, and to these alone for pay.

Third—The costs and expenses of administration on the Bank are also preferred, as has already been shown, and see also section 51.

These are the only preferences given by the Currency Act, and the inference is legitimate that the Congress intended to give no other.

A more critical examination of the words of the law strengthens this conclusion.

Passing over section 47 and the last clause of

vent's estate was absolutely an insignificant one, compared with interests then of pressing consequence. Consider, for a moment, the circumstances. At that time the nation was heavily embarrassed—well nigh bankrupt—and its indebtedness was increasing by millions of dollars every day. It needed funds. It needed a market for its bonds; or, if there was a market, it needed an increased demand and value for those bonds in that market. It needed a currency, for a specie currency was then out of the question, and certain to be so for indefinite years to come; or, if its treasury notes furnished a sort of currency, it needed for them a firmer credit, increased and increasing confidence on the part of the citizens, in their ultimate redemption in specie, at par. These needs were pressing, vital, of the very last importance.

They must be answered, or the struggle for national life, then waging to the death, was certain to come to an inglorious issue! It was hoped and expected that all these necessities would be, to a greater or less extent, met by the inauguration of the National Banking system. The new Banks would require Government bonds to a large amount to pledge as security for their circulating notes and for their deposits of the public funds; while the provision making their own bills redeemable in Treasury Notes would be sure to give the latter additional credit and increased value.

How great was the relief thus afforded to the nation in the hour of its extremity—how wise was the measure, can not here and now be put in words, without seeming to "praise to his face," one, whose

influence had so much to do with the inauguration of the new system and who now adorns the chief seat on the bench of this highest judicial tribunal! History says, "The vital wants of the Government *were* answered," and it also says that the National Banking system was a most important instrumentality to that end.

Who shall say that in order to attain ends so essential to national life as those which have been named, the Congress was unwilling and did not purposely yield, in this one instance, the insignificant right to have the first reach into an insolvent debtor's pocket? Who shall say that the legislators did not intend to enact *just what, and what only is fairly inferrable from their own chosen words!*

Beyond this, it is respectfully submitted that the maxim that "nothing is to be taken by inference or implication against the Government, if the words of a law will warrant any other reasonable construction," is at least of doubtful propriety in a country whose institutions recognize the more wholesome axiom that "the Government is for the people, and not the people for the Government,"—a country in which the people are *the* sovereigns, and may be presumed to reserve, rather than yield their ordinary and most equitable rights. In fact, if these remarks were addressed to a legislature instead of a court, the same suggestions would be germane to the act of 1797. The preference thereby attempted to be given to the Government over the individual citizen is inequitable, not in accord with the theory of our Government; and while no court can either change or ignore it, in

a case to which it applies, surely the judiciary will not seek to make it override later equitable provisions which prescribe the true rule of distribution. "Equity favors equality." Is it not time for courts to presume that legislators also favor it when their enactments so read?

Coming back for a moment to this question of intent, is it not exactly fair to presume that the Congress intended to ignore the old statute, knowing, as they did, that thereby the new system of banking would have an additional feature to commend it to public favor?

Suppose the currency act had contained a clause providing that no depositor in a failing National Bank should be entitled to receive one cent of his own funds until all possible liabilities of the institution to the United States had been paid in full. Would such a provision have commended the system to public favor? Under such a restriction, could any National Bank have secured a profitable "deposit line?" Would it not have proved ruinous? What, though it be replied "this is, and in fact, ever has been the law, even as to a State Bank." The answer, so far as the question of the intent of Congress is concerned, is, that while this may be, and may have been the law, and while it is also *legally* true that every man knows the law, yet, in point of fact this legal proposition never has been, is not now, known to one in ten thousand of those who have, or now do, put their funds in bank.

So far as it was and is known to them, the Congress knew that to create and establish a different and more

just rule as to the National Banks would be to give them a very decided advantage over all State or private banking institutions. Was not this an end which Congress desired to accomplish? Is it not accomplished, so far as the new rule will do so, by giving to the words of the currency act their legitimate operation and effect, untrammeled by the act of 1797?

To the mind of the receiver it is very clear that the provisions of section fifty, considered in connection with other parts of the currency act, and in the light of the circumstances attending upon the passage of the law are such that section five of the act of March 3, 1797, can not be held applicable to the settlement and distribution of the assets of a failing National Bank.

Passing to consider briefly the claim of the United States, asserted as to the proceeds of the sale of the brig Volant and cargo, its groundlessness may be made apparent in a few words. In brief, the facts may be summed up thus: Some years ago, United States officials committed what, in a private individual, would have been a trespass upon the property of British subjects; and now, because the Government finds itself bonnd to make good the tort of its own agents, and because the proceeds of that tort were at one time in the vaults of this Bank, it is asked that the liability be paid in full from the Bank assets, as a debt to the Government. If this is not a complimentary or smooth way of putting the case, it is, nevertheless, warranted by details. What are they?

Sometime, perhaps in the year 1864, the brig Volant and cargo were seized and libeled in the United States District Court for the District of Louisiana for alleged violations of law which, it was claimed, worked a forfeiture of brig and cargo to the Government. Pending the litigation, the court ordered the brig and cargo to be sold, the proceeds to be paid into court to abide the event of the suit. This was done. On the twenty-fourth day of July, 1864, the clerk of the court deposited the proceeds of the sale, to the amount of $124,649 57, in this bank; but subsequently, on the second of August, 1864, checked out $8,288 68, leaving a balance of $116,360 89 in the bank; and so the account stood when the bank suspended.

The Receiver is not quite certain that all the facts above stated appear in the record of this case, which is not before him, but he thinks they do.

On final hearing of the admiralty case, the judgment of the court was in favor of the British claimants and adverse to the government; thus finding and deciding that neither brig or cargo were forfeited to the United States, and therefore, in effect adjudging, that the seizure was wrong and that the government never had any right to either brig, cargo or the money arising from the sale. This decision was pronounced shortly after the failure of the Bank.

In view of these facts, how can it for a moment be pretended that the money which was in the Bank (proceeds of the sale) was the money of the government? The court decided it was not the money of

the United States, that the government could not retain it and ordered it paid to the British owners.

Would a payment to the United States, of the amount, by the Receiver or Comptroller, have been a compliance with this order? Clearly not. The liability was to the British claimants, and only their acquittance would have then discharged, or would now discharge the Bank.

Thus it is manifest, beyond all room for cavil, that the balance of this deposit in Bank, when it failed, was not a "debt due to the United States" within the letter, or even the spirit, of the act of March 3, 1797.

That the United States Government is in equity bound to make full payment to the innocent victims of its own wrongful acts is undeniable. An attempt to pass an act for their relief was made at the last session of Congress. Whether it became a law the Receiver is not advised. But that the Government can at this late day, by doing justice to foreigners, wronged by the acts of its officials, create a preferred claim against this Bank, is a proposition which might almost be characterized as monstrous! To give the Government such a preference, it is respectfully submitted, would be doing flagrant injustice to the other creditors. The claim is important because of its amount, and equally so because a decision upon it may be a precedent as to others of a similar character.

Other questions of more or less importance, are raised by the record, but perhaps it is not necessary to add to the remarks of others upon them.

If, in considering the two foregoing claims, the Receiver has leaned strongly to the side of the gen-

eral creditors of the bank, it was because it seemed to him that both law and equity were with them, and not because of any indifference towards a Government, for which, he trusts, he has ever been ready, and has manifested, at least *some* willingness to labor and to sacrifice.

Though nominally a defendant in the court below, the Receiver was not and is not bound in this case to represent the interests of the Government alone, but *is* bound rather to stand for the rights of other creditors when, as he most firmly believes, they are superior, or at the least, equal to those of the United States. In his rather anomalous position as a party to this record, yet with no personal or official interest in the result, it is his duty, if he says ought to state his convictions of the law, and ask that "as the law commands, so let the case be decided." His sole anxiety is that justice and equity be done, and that as speedily as may be; for after three years of waiting, it is to be presumed that many of the victims of this suspended Bank begin to feel that patience will very soon cease to be a virtue. In truth, there are already loud murmurs against both the Receiver and Comptroller, for a delay which neither could avoid.

CHARLES CASE,
Receiver, &c.

NOTE.

The claim asserted by the government as to the check drawn by May is important, because, unless it is to be held valid for its face and entitled to priority, the government is already over paid, and should account for a part, at least, of the money applied on this check.

The claim to priority may be further illustrated thus: A. is insolvent and makes, or is about making, an assignment to a trustee, for the benefit of all his creditors; or he is about to be forced to do so. He owes B. a much larger sum than he owes to any other individual—a sum equal to one-half the value of his unincumbered assets. If B. shares pro rata all will get a fair per centum on their claims; if he is paid in full, they will realize next to nothing. But B must share with all. Now, can the United States, by stepping in at this juncture and purchasing the claim of B., convert it into a preferred debt and compel its full satisfaction? If the government can do this, it can perpetrate a great wrong under cover of law. Without pretending to be familiar with all the reported decisions upon the law of 1797, some of which I have not seen, I cannot believe they sanction a doctrine, to my mind, so palpably unjust.

But, in principle, this hypothetical case does not differ, as to the question of preference, from the one in controversy; for what matters it that the government, instead of paying cash for May's check, gave for it a credit on his indebtedness?

This latter fact surely does not increase the equities of the claim.

Supreme Court of the United States.

No. 299.

C. CASE, Receiver, and H. R. HURLBURD, Comptroller of the Currency of the United States, Appellants,

versus

A. TERRILL & CO., F. BAUER ET ALS., Creditors of the First National Bank of New Orleans, Appellees.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE CREDITORS OF THE FIRST NATIONAL BANK OF NEW ORLEANS, APPELLEES.

J. A. CAMPBELL,
HENRY B. KELLY,
For Defendants in Error.

Supreme Court of the United States.

No. 299.

C. CASE, RECEIVER, AND H. R. HULBURD, COMPTROLLER OF CURRENCY OF THE UNITED STATES, APPELLANTS,

versus

A. TERRILL & Co., F. BAUER, ET ALS., CREDITORS OF THE FIRST NATIONAL BANK OF NEW ORLEANS, APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE CREDITORS OF THE FIRST NATIONAL BANK OF NEW ORLEANS, APPELLEES.

PLEADINGS.

The bill alleges that plaintiffs are creditors of the bank, in various amounts, as depositors and otherwise; that the Bank was organized and did business in New Orleans, from about the year 1864 till the 12th May, 1867, as a banking institution, under the acts of Congress

of 3d June, 1864, and amendments thereto; that about the 12th of May, 1867, the bank failed, and its operations were suspended by orders from the Comptroller of the Currency, for causes specified in the act, and Chas. Case was appointed receiver, and is engaged in liquidating the concerns of the same; that at the time of the failure of the bank in April, 1867, Thomas P. May was President of it, though not at the time when its operations ceased, in May, 1867; that the bank deposited, for the security of its creditors, $450,000 in bonds of the United States, which are now held under said law as a fund for the payment of the indebtedness of the bank; that the bank was also possessed of other assets to a large amount, which are also liable as a fund for the payment of its debts, and that there ought to be a large dividend to the creditors.

It is further alleged that the affairs of the bank have become complicated and entangled by the efforts of the United States to secure from the bank their claims against Thomas P. May, who, prior to the 12th of May, 1867, had been Assistant Treasurer of the United States, and was a defaulter in said office for the sum of a million dollars, or more; that, at the date aforesaid, the officers of the treasury were engaged in making a settlement with him, in the course of which they took from him an assignment of all his property, well knowing that he was insolvent, a defaulter, and had been criminally prosecuted for his defalcation; that under these circumstances, they presented, on the 14th

day of May, 1867, to said bank, a check drawn by said May, in favor of his firm of T. P. May & Co., and by them endorsed, for the sum of $315,776 11, and received $80,000 in currency, and $10,380 88 in gold coin in part payment thereof, and caused the check to be protested for non-payment for the residue; that, at the time of the drawing and endorsement of this check, the operations of the bank had been legally suspended, and that no payment or act of any of its officers was valid; that the certificate of the teller, that it was good, was false and unauthorized; that no credit was legally due to it, and no consideration was given for the check itself, but it was received wholly as a desperate effort to obtain from a defaulting, discredited and criminal debtor whatever he was willing in his extremity to surrender.

It is further averred that, at the time of the drawing of this check, May was a debtor for overdrafts and the unauthorized abstraction of its funds, in an amount far greater than any credit in his favor appearing on the books of the bank; and that, in his own insolvent and hopeless condition, he had no right to appropriate any portion of any nominal credit standing in his name on the books of the bank, until he had paid to the bank his own debt to it. That among the acknowledged overdrafts and debts, are found one for $112,009 09, standing to the credit of G. T. Beauregard, but due by May, and a check of $125,000, which was credited to said May, or said Beauregard, on the 27th April, 1867,

as cash, when there was no cash paid or money received, or receivable, therefrom.

It is further alleged, that though these facts have been made known to the Receiver and to the Comptroller of the Currency, and through them to the Treas urer, the latter still claims that these payment are valid, and that the check of May for $315,779 11 was an appropriation of so much money of the bank, and that it creates a priority in favor of the United States for its whole amount; and this is founded upon the false certificate of the teller, that the check was good. But it is charged that the teller had no right so to certify, and that the bank, in its then condition, was not bound; that, at no time, would such a check have had such an effect, but especially under the circumstances under which it was given and negotiated.

It is further alleged that May, in his assignment to the United States, included his interest in a copartnership with G. T. Beauregard, in a lease of the New Orleans and Carrollton Railroad Co., of the value of about $300,000. That the debt of $112,009 09 appearing in the books of the bank as due by said Beauregard, lessee, was actually due by May, and that Beauregard had a lien on the property of the partnership for this amount before May could dispose of the same. That the officers of the Treasury of the United States, recognising this fact, in the sale of said property in said railroad company to Bonneval and others, by public act before Le Gardeur, notary public, of 21st of August, 1867, for

$288,000, *acknowledged that liability and assumed to pay said debt to the bank;* that the United States are bound by this assumption, and the debt assumed is a credit upon any claim they may have upon the bank.

It is further alleged that the Receiver, as the representative of the bank, was entitled to the benefit of all the claims which Beauregard had upon the effects of the bank, he being the apparent debtor of the bank, as managing partner of the concern; that he is further entitled to claim of said firm of Beauregard & May the said property, and have their effects applied to the payment of the same; that May, at the date of the transfer, was insolvent, and had no right to transfer to the United States any right in the partnership until its debt was liquidated, and that, though this debt was actually the debt of May, it was a valid claim of the bank against the firm of Beauregard & May, and the assumption by the United States of the debt was no more than the recognition, of a liability legally existing.

It is acknowledged that the bank was a depositary of the United States; that the United States have valid claims against the bank, and may be entitled to some priority in their payment in certain cases.

To the end that the claims of the United states may all be ascertained and defined—that their priorities may be declared and adjusted, and that the liquidation of the affairs of the bank may be legally conducted- it is prayed that the Hon. Charles Case, receiver, etc.

and the Hon. H. R. Hurlburd, comptroller, etc., be made parties to the bill, and that they answer certain interrogatories.

In the settlement of the debt due the United States, and in ascertaining the extent of the priority to which the government is entitled, it is asked that the United States be charged with all sums they have received on any account belonging to the bank, or for which they are liable to the bank, and especially for the money received from the check of May, before mentioned, and that the check be disallowed altogether, as a charge upon the bank, or as entitled to payment from its effects; and that the government be charged with the debt due the bank and assumed by the United States in the sale of the lease of the Carrollton Railroad to Bonneval and others, by act before Le Gardeur, notary public, of August 21st, 1867.

A writ of injunction is prayed for to restrain the comptroller from disposing of the assets of the bank, until a decree of the court can be had in this cause.

Bill taken pro-confesso against May & Beauregard, October 5th, 1868, p. 16.

ANSWER OF THE RECEIVER.

Admits that the plaintiffs are creditors; that the bank was organized and did business in New Orleans, as alleged, from about the year 1864 to May 12th, 1867, that May was elected president thereof on the 6th October, 1866, and held the office till *April 8th*, 1867; says that

on 13*th May*, 1867, the bank failed to meet and pay checks drawn on it, and held and presented by the agents of the treasury department; *that on the same day* the said agents *took possession;* that on the following day, one of the circulating notes of the bank was presented at its counter for payment, and payment being refused, was protested.

On the 20th day of the same month, the respondent was appointed receiver, and on the 27th took possession of the bank, and from thence hitherto has been engaged in liquidating its affairs.

Respondent admits that the bank deposited with the Treasurer of the United States, U. S. government bonds to the amount of $450,000, not as security for the general creditors, but as security for liability as government depositary, and for the payment of its circulating notes.

That there were other assets of the bank liable as a fund for the payment of its creditors, portions of which have been converted into currency, and, with money on hand at the time the respondent took possession, have been paid into the treasury of the United States.

The respondent admits that, some time prior to the suspension of the bank, May had been Assistant Treasurer of the United States; that he was a defaulter in office for a large amount—whether for more or less than one million is not informed, but believes the defalcation amounted to over $500,000, perhaps double that sum—but can neither admit nor deny any specific sum.

Admits that, *at the time the bank suspended*, the agents of the treasury department, who then and there *took possession* of the same, were also *then engaged in endeavoring to settle with May* for his defalcation—to collect from him so much of his indebtedness as was possible, and to obtain from him the best security he could give for the balance—that, in pursuance of this object, they then, or about that time, took from him an assignment of all his property, and among other things, received from him his own check on the bank for $315,779 11; said check was dated May 13th, 1867, was payable to the order of T. P. May & Co., by which firm it was endorsed in blank, *May 14th*, 1867, on *which day*, or the *day previous*, the check was certified good by one of the tellers of the bank. That on one of said days, the said agents of the treasury department drew on said check about $80,000 in currency, and $10,370 38 in gold, which was sold, and was to be credited on said check at 35 per cent. premium, and the check was protested for non-payment for the balance. These were the payments applicable to the discharge of the check, as stated in certificate of protest, but respondent has been informed, and believes that the payment of said agents on the check amounted in currency, gold and premium to $104,000 00.

Respondent believes that when the agents received the check and drew the funds thereon, they knew, or had reason to believe, that May was largely insolvent;

and it is admitted that May has since been criminally prosecuted for his alleged defalcation. It is admitted that the check was received by the treasury agent to apply so far as paid or collectable in liquidation of the defalcation; that, at the time it was certified "good" by the teller, the bank had *virtually suspended* and was *in the hands and under the control of the treasury agents.*

Respondent says that it appears from the books of the bank, and he therefore states the fact to be, that May kept a deposit account, and that the nominal amount to his credit on Saturday, May 11th, 1867, the last day the bank did banking business, was $315,-779 11.

Respondent further says that he has been informed, and believes, that on the 13th May, 1867, May was, and for some time prior had been, a partner in a co-partnership in which G. T. Beauregard and A. C. Graham were the other members, the object of which was to conduct the operations of the New Orleans and Carrollton Railroad, under a lease to them, and respondent charges that said copartnership then, and for some time previous, kept and had kept an account in said bank in the name of G. T. Beauregard, lessee, and which account, on the 14th of September, 1866, had been, and then was, largely overdrawn, as by the said account on said book will more fully appear.

Respondent charges that, in order to cover said overdraft, and to make it appear that there was a bal-

ance to the credit of the account, May, on *the day* last aforesaid, *executed a note* in the name of G. T. Beauregard, lessee, payable on demand to the order of the bank, for $40,000; which note was, on the 15th September, 1866, passed to the credit of said account as part of the cash deposit of that day, by or on account of said Beauregard, lessee; but the said note was not then, nor has it ever been, in whole or in part, paid.

From the books of the bank, it further appears, and the fact is so charged to be, that on the 19th March, 1867, the said account was again largely overdrawn, to-wit: to the amount of $141,175 63, that about the date last aforesaid, a bank examiner, under orders from the comptroller of the currency, was about to examine the books, notes and funds of the bank, and that to cover up the last overdraft, May, on the 19th of March, 1867, drew his draft on A. C. Graham, New York, payable to his own order fifty-five days after sight, for $125,000, which draft was then and there endorsed by May to the bank, and was passed to the credit of the account of Beauregard, lessee, as so much cash, thus making a nominal balance in his favor; but no cash was then or ever realized on said draft; that the same was not drawn against any funds in the hands of Graham, applicable to the payment thereof, nor had May any reason to anticipate that funds of his would be in the hands of Graham at maturity of the draft to pay the same or any part thereof; that the draft was in fact never stamped or forwarded for ac-

ceptance or payment; that the draft has been reported as worthless paper by respondent to the Comptroller of the Currency, in schedule D, of the first report made

From the books of the bank it further appears, and the fact is so charged to be, that when the bank suspended the account was again overdrawn in the sum of $72,008 89, and so stands to this date.

Thus, from the facts aforesaid, it appears that when the check for $315,779 11 was drawn by May and certified by the teller, May was a debtor to the bank as one of the partners of the copartnership aforesaid, in the sum of $237,008 89.

Further defendant says, that when he took possession as receiver, he found among the assets of the bank notes and bills upon which May was liable to the bank as acceptor and endorser, amounting in the aggregate to $188,727 67.

A detailed description of these notes and bills is given in the answer. Some of them were past due, and the residue to mature at short dates, and all yet remain due and unpaid.

The answer admits that May assigned his interest in the copartnership aforesaid to the United States, and that he also assigned or assumed to assign, the interest of A. C. Graham. Admits that the lease was of great value, but whether of the value of $300,000 or not, can neither admit nor deny. Avers that the United States, some time in the month of October, 1867, and not in the month of August of same year, as charged in the

bill, sold to Bonneval and others, for $288,000, and that by the terms of the sale the United States agreed to save the purchasers harmless from any claim of the bank for the aforesaid over-draft of $72,002 89, and also the said note of $40,000.

Respondent does not know what lien, if any, Beauregard had upon said copartnership property; but whether it enures or enured to respondent's benefit as receiver, and what, if any, power May had to assign his and Graham's interest to the United States, he prays may be inquired of and determined by the court.

In answer to the first interrogatory propounded to him, relative to the claims of the government on the bank in its capacity of depositary of public monies, the respondent gives particulars, amounting in the aggregate to $230,138 54. Respondent says that at the date of the filing of the bill he had been notified of no other claims than those which have been included in the above aggregate.

Since then he has been notified by the Treasurer of the United States that, on behalf of the government, he does and will claim the amount of the proceeds of the sale of the brig Volant and cargo, which were deposited in the bank before its suspension by order of this court, to the amount of $121,649 57, or about that sum.

Respondent further says, that from the books of the bank it appears that there were other large deposits in the bank prior to its suspension, similar in character to

the one last aforesaid, and that it may be that, as to all such, the government may yet set up a similar claim.

Respondent does not know what credit has been given to the bank by the Treasurer of the United States, but the account should be credited, in addition to all, moneys paid over by respondent, with $24,000 accrued interest on bonds, held by said Treasurer, up to May 1 1868. Is informed and believes, that the United States Treasurer holds, or did hold, United States government bonds, the property of, and deposited by, the bank, to the amount of $450,000, of which $250,000 were as security for government deposits, and $200,000 as security for circulation which amounted at the time of the suspension to $180,000.

Of the assets of the bank about $235,000 have been collected, excluding interest of bonds. Of this sum the Treasurer of the United States has received and holds for the bank $207,945 60. The expenditure of the balance is accounted for.

ANSWER OF THE COMPTROLLER.

That he is Comptroller of the Currency, as alleged in the bill, and submits, on behalf of the United States, to the decision of the court the claims of the United States to priority of payment over the alleged claims of the creditors of the bank that are not disputed.

1. That the United States are lawfully entitled to claim the balance due on a check of T. P. May, drawn

in favor of his firm, and which was transferred to the United States; that the said check was certified to be good by the teller of the bank, and was accepted by the United States in settlement for a debt due from May to them for $315,779 11.

2. The United States claim priority on account of deposits by the Collector of Internal Revenue, amounting to $215,573 37, and what were in bank at the date of their suspension.

3. The United States claim priority on account of bills of exchange purchased from said bank by officers of the Postoffice Department, for $3,528.

4. A priority for the sum of 10.888 37, deposits of revenue by Collector A. P. Corley in Texas.

5. Priority upon all deposits made in said bank by officers of the United States, and especially the proceeds of the sale of brig Volante and her cargo, amounting to $124,469 57, deposited in said bank by order of the District Court of the United States for the District of Louisiana.

The said defendant further says, that he adopts as true the statements of the answer of his co-defendant, Charles Case, as to the facts and circumstances under which these claims to priority have arisen.

6. This defendant denies that the creditors of the bank are in any manner authorized to appropriate any portion of the money received from said bank on account of May, to the payment of any portion of the debt due to the United States, or that they are entitled

to claim any advantage from the imdemnity which May provided for Beauregard and others in their deeds conveying the lease of the Carrollton road, or in any contracts made with the said May.

This defendant answers, that the contracts made between May and the officers of the United States are accurately stated in the answer of the defendant Chas. Case, and his answer is adopted in all of its statements in regard to said contracts.

THE EVIDENCE.

Plaintiffs offer:

First.—Copartnership agreement between G. T. Beauregard, T. P. May and A. C. Graham, before Ducatel, N. P., April 18, 1866.

By article 1 of this act, G. T. Beauregard agrees to obtain, in his own name, but for the benefit of the appearers, the lease of the New Orleans and Carrollton Railroad; he shall take charge of, manage and conduct the undertaking, at a salary of $5,000 per annum.

By article 2d, May and Graham agree to furnish the amount of money necessary to carry out the enterprise, not to exceed $150,000 for each of them, making an aggregate of $300,000.

Second.—Assignment of May to the United States by act before Hero, N. P., of May 14th, 1867.

In this act it is recited that, "in consideration of money due by him to the United States of America, the exact amount of which is to be ascertained upon the adjustment of his accounts with the United States

of America, in part payment of said indebtedness," May assigns to the United States, represented by John J. Knox, special agent of the United States, present and accepting for the United States, property estimated in the assignment, to amount in value to $1,196.779, including the following items:

"Cash in the First National Bank of New Orleans" $315,779

The interest of the said May "in and to the Carrollton Railroad Company, and the property, stock and appurtenances thereto belonging," the value of which is estimated at 480,000

Third.- -Transfer of rights by the United States to Bonneval, Hernandez and Binder, by act before Le Gardeur, N. P., of August 21, 1867.

The act transfers all the rights of the United States in and to—

1. The lease of the N. O. and C. R. R. and of the franchises thereof, the railroad tracks, rolling stock, etc., etc., thereto belonging.

2. The copartnership entered into between May, Graham and Beauregard, by act before Ducatel, N. P., of 18th April, 1866, for the purpose of conducting the business of said railroad, by which act of copartnership the parties thereto become interested in the proportion of one-third each in the lease, property and franchises of the railroad.

3. Four certain parcels of ground, with improve-

ments acquired for the use of the said partnership by purchase at different times.

The United States are the owners of the above conveyed right, title and interest, which embrace and cover two-thirds of the whole, by having acquired the same by purchase from May and Graham, by act before Hero, N. P., of May 16, 1867.

The sale is made for the price and sum of $288,000, for the two-thirds interest transferred.

The purchasers assume liabilities of May and Graham as lessees and copartners aforesaid, as per schedule annexed to act, amounting to $162,852 58.

"It is further understood, covenanted and agreed, that the United States shall and will, at all times, protect the purchasers against, and save them harmless from, any claim which might, at any time, be set up against them personally, or against the aforesaid copartnership, or the property, effects or rights thereof, by or in the name and for the use of the First National Bank of New Orleans, or assigns, for the recovery of, or in reference to, an overdraft of $72,009 09, and a promissory note for $40,000, in all $112, 009 09, which apparently stand to the debit of G. T. Beauregard, as lessee of the N. O. and C. R. R., *but which in truth and reality are exclusively due and owing to the said bank by the said Thomas P. May.*

"*And for better protection of said purchasers, the government through its agents aforesaid, agrees to, and does hereby assume, the payment of said indebtedness of* $112,-

009 09, *to the said First National Bank of New Orleans.*"

Fourth.—The answers of G. T. Beauregard, taken before D. Urban, U. S. Commissioner, January 2, 1869—especially the answers to the 3d, 4th and 6th interrogatories.

Fifth.—The answer of T. P. May before U. S. Commissioner Urban, on the 4th January, refusing to testify in the case on the ground that his testimony might tend to his disadvantage and injury in the case of the United States against him, then pending upon indictment in the U. S. Circuit Court for the District of Louisiana.

Sixth.—Deposition of D. B. Forbes before D. Urban, U. S. Commissioner, 2d of January, 1869.

Was President of the bank in May, 1867. On Saturday, 11th of May, 1867, at 3 o'clock P. M. without having any idea of its suspension, the bank closed regularly as usual; and on Monday, the 13th of May, 1867, when he went to the bank, at the usual hour of 9 A. M., found the bank in the possession and under the control of Mr. John J. Knox, a deputy Comptroller of the Currency, who had taken charge of the bank without the bank having suspended, because, up to that time, it had always paid its notes and other obligations on presentation, and none were protested until Tuesday, May 14th, and after Mr. Knox had taken charge of the bank.

This witness proves that May's check for $315,779 11

was certified by the teller on the 13th of May, after Mr. Knox had taken possession and control of the bank.

Seventh. Deposition of Louis Meig, before United State Commissioner Urban, January 2, 1869.

Was exchange clerk and acting cashier of the bank in the month of May, 1867. The bank suspended on the 13th of May, 1867. The bank was taken possession of by Mr. Knox and Mr. Maline on Sunday, the 12th day of May, 1867. I was notified of their taking possession on Sunday, about 1 P. M., at my residence, by means of an order from General Spinner to deliver up to them the books and contents of the vault for examination. On Tuesday, the 14th day of May, 1867, which was after the bank had been taken possession of by Mr. Knox and Mr. Maline, a note of the amount of five dollars was handed to Mr. Whitmore, the paying teller, who refused paying said note *by the orders and direction of Mr. Knox.*

SUMMARY OF FACTS.

On Sunday, the 12th day of May, 1867, the acting cashier of the bank received an order from the Treasurer of the United States to deliver to Knox and Maline, Treasury agents, the books and contents of the vault of the bank. When the bank was closed at the usual hour on Saturday, May 11, 1867—the last day upon which it did banking business—nothing of the kind was anticipated by the officers of the bank. At

an early hour on the morning of Monday, May 13th, the Treasury agents were in full possession and control, and an abrupt end had been put to all the banking business of the institution.

When the bank closed on Saturday, the 11th of May, and when the Treasury agents took possession, on the 12th or 13th, there was an apparent balance standing on the books to the credit of the account of T. P. May of $315,779 11. At the same time he was a debtor to the bank on another account, not kept in his own name, but in that of G. T. Beuregard, lessee, in the sum of $237,008 89. See answer of Receiver, p. 9, printed Transcript. He was also liable to the bank in his individual name, as acceptor of a draft of A. C. Graham, in the sum of $100,000, and was endorser on notes over due in the further sum of $9,543 67. Furthermore, he was then liable to the bank as endorser on notes soon to mature in the sum of $79,184. All of which drafts and notes remain due and unpaid. See answer of Receiver, page 9, printed Transcript.

So that on the 11th, 12th and 13th of May, 1867, his relations with the bank were as follows:

Due by him on the account of G. T. Beauregard, lessee		$237,008 89
Liabilities as acceptor and as endorser on notes over due		109,543 67
		$346,552 56
Amount standing to May's credit		315,779 11
Balance against him		$ 30,773 45

Amount brought forward		$ 30,773 45
Add amount of his liabilities as endorser on notes soon to mature and remaining unpaid		79,184 09
And we have		$109,957 45

as the amount of his debts and liabilities to the bank on the 13th of May, 1867, over and above the amount standing to the credit of his individual account.

On that day the Treasury agent, having already entire possession and control of the bank, and having put a stop to all of its banking operations, presented to a gentleman who *had been a teller of the bank*, but who had become *functus officio* by the taking possession of the bank by the government officers, a check of T. P. May for the whole amount standing to the credit of his individual account, viz: $315,779 11, which check was then and there certified as "good," by the individual who had been—but was no longer—an officer of the bank.

Thereupon the Treasury agent took out of the vaults of the bank about $80,000 in currrency and $10,378 38 in gold coin, the currency to be credited on the check at par, and the gold at 35 per cent. premium, and the check was protested for non-payment of the balance.

The amount credited on the check is—

Currency		$80,000 00
Gold	10,378 38	
Premium, at 35 per cent	3,652 43	14,030 82
		$94,030 82

At the time of the drawing of the above check, May was a defaulter to the United States for over a million of dollars, as Assistant Treasurer of the United States at New Orleans, and with a view to apply it to meeting said defalcation in part, the Treasury agents, on the 14th of May, 1867, took from May an assignment, by notarial act before Hero, N. P., of property estimated in the act at the value of $1,196,779. including, among other items, the following:

Cash in the First National Bank $315,797 00

The interest of May in and to the Carrollton Railroad Company and the property, stock and appurtenances thereto belonging, estimated at..... $480,000 00

It has already been said, that at the time of the taking possession of the bank by the government officers, May was the real debtor to the bank, on account of the Carrollton Railroad, which account was kept not in his name, but in that of G. T. Beauregard, lessee, in the sum of $237,008 89. A portion of this debt, to-wit: the sum of $112,009 09, the government of the United States, in the most binding and formal manner, by authentic act before Le Gardeur, N. P., of August 21, 1867, assumed to pay to the First National Bank of New Orleans. The remainder of the above amount they were under equal obligations to assume before applying the price of partnership property to the payment of the debt of an individual partner, as it constituted, as well as the portion of the debt assumed

by the government, a partnership debt, privileged on the partnership property. That part of the debt not formally assumed by the government, in the act before Le Gardeur, is that originating in a draft of T. P. May on A. C. Graham for $125,000, which was passed to the credit of the Carrollton Railroad account as so much cash, whereas no cash was ever at any time received on account, and all the circumstances connected with which are fully set out in the answer of the Receiver, at page 8 printed Transcript.

The direct indebtedness of the bank to the government is only claimed to have amounted, at the date of the suspension, to $229,989 74. (See answer of Comptroller, at page of 34 of printed Transcript). To secure this the United States held $250,000 in bonds. Redemption of circulation ($180,000) was secured by $200,000 bonds.

The contest in this case arises *not* out of any claim to priority for the government on the assets of the bank for payment of any debt due the United States *by the bank*. All such indebtedness, as we have seen, is amply provided for. But, under assignments from T. P. May to the United States, made *after* insolvency of both May and the bank, priority is claimed on the *assets* of the *bank* for a debt due the United States *not* by the *bank*, but by *T. P. May*. The question—if it can be called a question—is, can the United States claim to have acquired by assignment from May any greater rights against the assets of the bank *than he himself had?*

Priority is also claimed for certain deposits of funds of parties litigant by officers of United States Courts. But it is clear that any priority to which the United States may be entitled, in any case, extends only to public funds, or to debts due *to the government.*

Ch. 20, § 5, 1 Stat. at Large, p. 112.

ARGUMENT.

The material questions arising in this cause may all be solved by considering the transactions between the United States and Thomas P. May, at one time an Assistant Treasurer of the United States, and a defaulter in that office, as they are related to the affairs of the First National Bank of Louisiana, whose Receiver is an appellant.

On the 12th day of May, 1867, (John J. Knox,) a Deputy Comptroller of the Currency entered into possession and control of the First National Bank of New Orleans, under instructions from the Treasury Department. The acting cashier received orders from the Treasury Department to deliver up to him the books and contents of the vaults for examination. (R. 19, folio 64). On the 13th of May the President of the bank found the bank in "the possession and under the control" of Mr. John J. Knox. The president and cashier seem to have done no official acts after this. On the 13th, in this condition, Thomas P. May sent his check in blank to be filled up for the full amount of his balance on the books of the bank. The receiving teller ascer-

tained the apparent amount, and certified the check to be " good."

It was a check payable to the order of Thomas P. May & Co. The following day May made an assignment of property to the United States, which he valued at $1,196,779 00, and of this property is his cash balance aforesaid in the bank, $315,779, and his stock 1410 shares, being considerably above half of the capital of the bank. Mr. Knox seems to have taken from the bank its specie and currency amounting to $80,000 of the latter, and $10,378 38 of the former, upon this assignment and check, and then ordered the bank to suspend payment of checks and notes.—*Ans. of Case.*

The admissions of the receiver in his answer, and of the decree pro confesso, and of the comptroller who adopts the answer of the receiver, show that Thomas P. May was at this time insolvent, and under prosecution for his defalcation in office. That Knox was the agent of the United States to settle with him, and that he made this settlement, (R. 28,) and that he was aware of the insolvency of the bank and held it in possession in order to have the measures for its suspension completed. That the operations of the bank were suspended by his orders. It is also in proof by Beauregard and answers of the receiver, that May's accounts in the bank had been overdrawn and that his conduct towards the bank had been dishonest and fraudulent.

His debts and liabilities to the bank at this time

amounted to above four hundred thousand dollars. The quality of May's dealings with the bank sufficiently appears from his own answers to the searching questions addressed to him. (R. 22-23.) He would make no answer because he could make none that did not tend to criminate him and injure him in a criminal prosecution then pending against him in the Circuit Court of the United States.

The defendants in error in this cause are creditors of the bank, as depositors, and they represent this entire and injured class. Lured by the name and apparent credit and character of this institution, to deposit their daily earnings and collections, their lot has been to await a settlement until their hearts have been made sick. Not one dollar has been distributed after three years of delay. Whatever of coin or currency was found in the bank has been drawn from the control of the bank, and the whole amount of its assets are claimed to be a fund to satisfy debts due to the United States, the principal of which is the claim they derived from Thos. P. May, their defaulting treasurer.

No one pretends to say that May had any special property in the custody of the bank on the 13th or 14th of May, 1867. He had an account at the bank which showed a balance of $315,779. As to this balance admitting its entire correctness, he was in the same condition as the defendants in this court. The books of the bank exhibit in their favor balances similar in their character and import, to those of May. They are de-

depositors or purchasers of its exchange. May had no better standing. But the testimony shows that May owed the bank $237,000 on the account standing on the books in the name of Beauregard, lessee, but which in fact was his account. He had *taken* money of the bank to supply (under a contract with Beauregard) the wants of a railroad that he partially owned. The answer of Case shows notes and bills of his running to maturity in May and June, 1867, for $179,000 and upwards His assignment to the United States after his insolvency of an apparent cash balance in his favor on the books was subject to be held as security for these liabilities. The check gave no additional force to this assignment.

When the check was made and presented, May, as well as the bank, was insolvent. The officers of the United States had closed the doors of the bank for examination, and had suspended the powers of its officers. The agent of the United States took a control over the property of the bank, and claims to have obtained a preference to a single depositor by taking his check for the United States. This is the effect of his act. Conceding a clear balance in favor of May, still May had no title to a preference over any other depositor. May must share the same fate as others like him. But Knox, acting for the United States, procures May's check, and acting for the bank, or in control of the bank, he pays May's check as far as there was money in its vaults. He then directs the nonpayment of a bill of *five dollars*

that had been issued by the bank, so that the bank might be put into liquidation as an insolvent bank. Whence did Knox derive any power to appropriate all of the cash in the bank to this check?

The president knows nothing of these payments. The cashier was not consulted and had no information of the transaction until it was done. If the officers of the United States had any authority to take possession and control, under the acts of Congress, it was a special and limited authority. It was only a power to examine into the condition of the bank, to ascertain its ability to perform its functions, and whether it had violated its charter. They had no power over the property of the bank to give or to acknowledge priority.

If May had owed no debt to the United States, could these officers have paid his check under the conditions that existed at that time? Could the bank have paid to May its last cent and then suspended operations, the fact of insolvency being fully understood.

The fact that May gave his check to the officer of the United States in charge of the bank, and who had the same notice does not strengthen the case for the United States. The United States can have no better claim than May. An assignment of a debtor in insolvent circumstances of his property for the security of his creditor, does not convey any other title than the assignor had. The assignee takes it subject to all of the equities that attach to it.

2 Story R. 555; 11 Ala. Rep. 1068; 1 Paige, 125; 3 Story R. 507; 2 Story R. 349.

It appears from the answers of the receiver and other parties, that May had overdrawn in the name of Beauregard, as lessee of the New Orleans and Carrollton Railroad, two hundred and thirty-seven thousand dollars. May transferred to the United States the lease, as his property, with a warranty, and the beneficial interest in a portion of that lease is assumed to be his own.

The United States, by their agents, sold this lease to Bonneval, Hernandez and others. They assumed in the sale, and were bound by the acceptance of the lien to pay the debt mentioned in the agreement. The debt of $112,009 09 forms part of the assets of the bank which enter into the consideration of the assignment. It was May's debt to the bank, and a proper charge upon the effects of May in the hands of the United States. The defendants do not object to the assignment of May to the United States, nor that the United States may come in for any balance that may be due to May, but the United States can only claim as an *ordinary creditor*, and is subject to all the defences that the bank might have made against May himself.

There is nothing in the transaction which gives the United States a preference even to the extent of the currency and coin that Knox took as a part payment of the check that he had obtained from May.

The United States not only claim to hold the currency and coin which was thus removed, but claim that by the transfer to the United States, May's demand be-

comes a privilege demand, and that the balance of $215,573 37 is a privilege demand.

This is claimed in the answer of Hulburd, Comptroller, as resulting from the fact of the teller's certificate of the check. The check was made and certified to May, the 13th of May, 1867, when the bank was in the possession and control of Knox and Maline. Forbes' test. p. 18.

The assignment was made the 14th of May, 1867, at which time this check passed to the United States. The money was drawn the same day, and this check was protested for the balance. The bank was insolvent —May was insolvent, and these facts known, and that the bank would be put into liquidation at once. There is no testimony that the teller of the bank had any power to bind the bank by such a certificate. Nor is there any evidence of any custom on the subject within the city. Nor do the acts of Congress convey such power to that officer of the bank.

The case shows management on the part of Knox to obtain an advantage for May or the United States, by the use of his power as a treasury agent to the prejudice of the legal rights of other depositors in the bank more meritorious. May, a few weeks previously, had been the president of the bank. He had 141-200 of the stock of the bank—more than two-thirds. He had overdrawn his account—placed his paper in the bank as cash—suffered his endorsements to remain unpaid. His debts and liabilities exceeded

by half the capital of the bank his apparent cash balance on its books. Still, with this state of facts, the United States claim to draw more than the capital of the bank on his check, having already withdrawn the last cent of its currency and coin upon it. The transaction shows that May treated the bank as his own property. Forbes, the president, was a large debtor to the bank, and his paper was endorsed by May. There had been no meeting of the Board of Directors for weeks. Under such circumstances, it is not strange that the condition of things existed that we find. Upon the power of a teller to certify checks, and the effect of their certificate, we cite Murphy vs. Eagle Bank, 9 Metcalf, 306.

This claim of priority, with five others set up in the answers of the comptroller and receiver, will now be considered. The acts of Congress providing for the establishment of national banks, and to supply a paper currency of uniform value, introduced a new system, of very great importance to the fiscal and commercial operations of the United States, and of individuals in every portion of the same. The acts were designed to ascertain, and to define with exactness, the relations of this new class of juridical and commercial persons to the United States and the mercantile and trading community, whether as bankers doing business, or as bankers reduced to a condition of insolvency and forced liquidation. When provisions have been made on this subject by these laws for these persons, they

are *exclusive*, and imply a *negative* of all other modes of trade or liquidation. Those laws provide that a deposit of bonds shall be made with the Treasury Department, to secure the issues of bills of the bank. The United States agree to redeem the bills, and this debt is the first lien or privilege upon the bonds and the other assets of the bank, after the expenses of liquidation are deducted.

The act then provides: "And from time to time the Comptroller, after full provision shall have been *first made* for refunding to the *United States* any such *deficiency* in redeeming the *notes* of such association, as is mentioned in this act, shall make a *ratable dividend* of the money so paid over to him by such receiver, *on all such claims* as may have been proved to his satisfaction, or adjusted in a court of competent jurisdiction." §§ 48, 50, 12 Stat. at Large.

This enactment is special, and defines the conditions on which these associations were to be organized, managed and, in case of insolvency, liquidated. The object of the act was to give to the banks credit, by stating distinctly the terms on which each person who received their bills, or made deposits, or purchased exchange, would stand in the event of their insolvency. The rule of distribution excludes all preferences or priorities, except in a single instance. After the issues of the banks are redeemed and their expenses paid, the rest is to be proportionately divided *on all such claims*, etc, as shall have been presented and proved.

The same acts provide that the Treasury Department might employ one of these banks as agents and depositaries. But security must be taken from the bank.

In this case it appears, from the answer of the receiver, whose statements are adopted by the comptroller, the United States held two hundred thousand dollars in bonds, to secure the issues of bills or currency, and two hundred and fifty thousand dollars in bonds, as security for government moneys deposited with the bank by agents and officers. The account of the government is stated in the Master's report, at pp. 31, 32.

The defendants do not deny that the United States have a privilege upon the moneys that may arise from the $250,000 of bonds mentioned above, in the instances to which these bonds are applicable, and that for all cases to which they apply resort must be had to those funds in the first place. And that the United States can have no preference except upon the securities thus pledged, unless there is a deficiency in the proceeds of the bonds pledged to secure the circulation. The acts of Congress provide carefully for a preference of a single debt to the United States. None other is provided for in the act. But a rule of distribution is declared which excludes every inference of another preference. The comptroller is required to make a *ratable* distribution among a class of creditors *exactly* described, and this when the claim of the

United States on a single claim is amply provided for. The extension of the act of 1797 to State corporations which might be indebted to the United States and become insolvent was not adopted without dissent, and it is a matter of some difficulty to afford an answer to the dissenting opinion of Justice Story.

Benton vs. Farmers' Bank of Delaware, 12 P. If the Congress had examined the act of 1797, and the opinion of the Supreme Court in such cases, it must have been satisfied that the difficulty of applying them to this new class of associations would not be removed by the words of this act. The purview of the act was not to employ these corporations without full and sufficient security. The policy of the government had been to have no connection with banks in any of its fiscal operations, and the only change in that policy by the act under consideration was, to exact United States bonds as a deposit in all cases where any debt to the government was created; and to exact a deposit of United States bonds for the circulation, which the United States guaranteed and agreed to receive for public dues. The community at large were invited to deal with these banks by the fact that the bank issues were independently secured, and that all other debts would be paid equally and ratably in case of failure. But if the government can come in with a preferential claim for deposits made by its officers and purchasers of bills by them, and assignments of drafts to the United States due by the bank to other parties—there will be distrust

and insecurity. The Treasurer of the United States has gone one step beyond all this. The United States had a suit in which the Volant was seized and sold, by order of the District Court. The bank was selected as the depository of the money arising from the sale. The decree of condemnation was reversed and proceeds of the sale were ordered to be restored to the British claimants and owners. The bank had failed and did not pay to the claimants, and this is claimed as a debt due to the United States, and entitled to preference. We reply to this demand, the terms of the act of Congress establishing and accrediting the bank. No priority is provided for in the case, but a different rule of distribution is plainly and explicitly declared in the body of the act creating this new class of corporate and associated bodies. It is not to be argued that the act of 1797 is to be taken as a part of the law of those associations. There is no connection between that act and the acts creating these corporations. The judicial and commercial persons created by Congress have a distinct law prescribed for them in the act of their incorporation and for their government, which was made to give them credit in the community. Every private depositor was invited to give confidence to the bank upon the consideration that the *circulation* was secured by bonds of the United States and was provided for, and that the property of the bank was after this a fund for all of the creditors, ratable and in equal proportions. The law of priority is as distinctly asserted in the act as

the law of distribution. No reference is made to the act of 1797, nor is the principle of that act introduced, but a different one. The one declared is complete and exhausts the whole subject.

The debt assumed by the officers of the United States in the settlement with May, is a proper charge on the property of May in the hands of the United States—May was the maker of the note in point of fact, and liable on it—Beauregard was not.

The money was drawn for the partnership, of which May and Beauregard were members, and May transferred a partnership asset, worth eight times the amount of the note to the United States, viz: The lease of the Carrollton road which Beauregard might have retained to pay this debt. The debt was assumed and the lien transferred to the United States by May, and sold by the United States. Beauregard had a lien on the lease and the bank through him, and the assumption was proper and legal.

Conkling Tr. d. 691; Hoxie vs. Carr, 1 Sum. 173; 12 Peters, 221; 2 Story R. 334.

J. A. CAMPBELL,
HENRY B. KELLY,
For Defendants in Error.

2 Qts M 2.46
Turkey
Mushroom Chicken
1 Pint 1.05
Tender 2.7
12 Pcs 1.92 Dinner
16 Small 84 Dinner
10 Pcs .614
Fresh Cooked
Y. M. Sandwich

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HENRY B. KELLY,
For Defendants in Error.

2 Pfd Fuller 2.40

marburg 2 Std

1 Pfd 1.05

Handel 27

1 2 Pfd 192 Std.

16 Std 64 Std

1 Pfd .64

7 Blech Seife 1

1 Pf. Bürsten